TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1960

No. [redacted] 17

DANIEL NIEMOTKO, APPELLANT,

vs.

STATE OF MARYLAND

No. [redacted] 18

NEIL W. KELLEY, APPELLANT,

vs.

STATE OF MARYLAND

APPEALS FROM CIRCUIT COURT FOR HARFORD COUNTY, STATE OF MARYLAND

FILED FEBRUARY 11, 1960.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 599

DANIEL NIEMOTKO, APPELLANT,

vs.

STATE OF MARYLAND

No. 600

NEIL W. KELLEY, APPELLANT,

vs.

STATE OF MARYLAND

APPEALS FROM CIRCUIT COURT FOR HARFORD COUNTY, STATE OF MARYLAND

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[fol. 1]

IN THE CIRCUIT COURT FOR HARFORD COUNTY

STATE OF MARYLAND

vs.

DANIEL NIEMOTKO

DOCKET ENTRIES

Disorderly Conduct

June 28, 1949. Certified copy of Docket entries, warrant and Appeal Bond fd.

July 11, 1949. App. of Hayden C. Covington and Grover C. Powell, for deft. per order fd.

Nov. 14, 1949. App. of Harry Yaffe, Esq. for deft. (short).

Nov. 28, 1949. Taken up before the court and a jury and testimony heard and not concluded.

Nov. 29, 1949. Testimony resumed and concluded.

Nov. 29, 1949. Motion to dismiss filed by defendant with order of court overruling said motion fd.

Nov. 29, 1949. Motion of defendant for instructed verdict with order of court thereon overruling motion fd.

Nov. 29, 1949. Verdict Guilty.

Nov. 29, 1949. Motion of defendant for judgment N. O. V. and order overruling motion fd.

Nov. 29, 1949. Judgment and sentence of the court that the defendant pay a fine of $25.00 and costs.

Nov. 29, 1949. Motion for new trial fd.

Nov. 29, 1949. Motion for new trial overruled, per order fd.

Dec. 10, 1949. Designation of parts to be included in record fd.

Dec. 27, 1949. Testimony filed.

[fol. 2] IN MAGISTRATE'S COURT OF HAVRE DE GRACE

WARRANT

STATE OF MARYLAND,

Harford County, to-wit:

To Raymond Fulker, Sheriff of Said County, Greetings:

Whereas, Complaint has been made before me, the subscriber, one of the Justices of the Peace of the State of

Maryland, in and for said county, upon information and oath of Walter T. Walker, who charges Daniel Niemotko with having on the 26th day of June, 1949 at Harford County aforesaid, unlawfully acted in a disorderly manner in Havre de Grace, Harford County, Maryland contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

You are therefore commanded immediately to apprehend the said Daniel Niemotko and bring him before me, the subscriber, or some other Justice of the said State, in and for Harford County, as aforesaid, to be dealt with according to law. Hereof fail not, and have you then and there this warrant.

Given under my hand and seal this 26th day of June, in the year of our Lord 1949.

Harry E. Dyer, Sr., J. P., Committing Magistrate.
(Seal.)

In Magistrate's Court of Havre de Grace

Docket Entries

June 26, 1949. State warrant issued to Raymond Fulker, Sheriff, by Harry E. Dyer, Committing Magistrate, upon oath of Walter T. Walker, who charges Daniel Niemotko with disorderly conduct in Harford County, State of Maryland, on or about June 26 49.

Returned "Cepi". Trial had June 27 49. Plea of "Not Guilty". Jury trial waived by defendant. Found "guilty". Fined $25.00 and $6.00 costs.

[fol. 3] June 27 49. Appeal entered to Circuit Court for Harford County, November Term, 1949.

Bond posted in amount of $200.00. Chris Kalmbacher surety. Transcript June 29 49.

As Witness, G. Howlett Cobourn.

I Hereby Certify that the above is a true copy of my docket entries.

G. Howlett Cobourn, J. P.

[File endorsement omitted.]

In Circuit Court for Harford County

Motion to Dismiss—Filed November 29, 1949

Now comes the defendant, Daniel Niemotko, at the close of all the evidence, and moves for a finding of "not guilty" and for a judgment dismissing the complaint upon the following grounds:

(1) The undisputed evidence shows that the defendant is not guilty as charged in the complaint.

(2) The prosecution has wholly failed to prove that the defendant committed the offense of disorderly conduct.

(3) There is no evidence to support a finding and judgment of guilty.

(4) The undisputed evidence shows that the defendant, at the time of his arrest, was a minister delivering a sermon on a scriptural subject to an audience gathered in the public park to worship Almighty God and who were listening to the sermon being delivered, which does not constitute disorderly conduct.

(5) If the statute supporting the prosecution is construed and applied by this Court so as to allow a conviction of the defendant under the facts and circumstances of this case, because of his exercise of his civil rights in the pub-
[fol. 4] lic park, then it unlawfully abridges and denies him his right of freedom of conscience, freedom of speech, freedom of assembly and freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution and the Declaration of Rights of the Constitution of this State.

Wherefore the defendant prays that this Court enter a judgment discharging the defendant upon a finding of not guilty.

Daniel Niemotko, Defendant; Harry Yaffe, by Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York, His Counsel.

[File endorsement omitted.]

Motion Overruled.
Nov. 29, 1949.

Frederick Lee Cobourn.

In Circuit Court for Harford County

Motion for Instructed Verdict—Filed November 29, 1949.

Now comes the defendant in the above entitled and numbered cause, at the close of all the evidence, and moves the Court to direct and instruct the Jury to return a verdict in favor of the defendant and find the defendant 'not guilty' for each of the following reasons:

(1) The undisputed evidence shows that the defendant is not guilty as charged in the complaint.

(2) The prosecution has wholly failed to prove that the defendant committed the offense of disorderly conduct.

(3) There is no evidence to support a finding and judgment of guilty.

(4) The undisputed evidence shows that the defendant, at the time of his arrest, was a minister delivering a sermon on a scriptural subject to an audience gathered in the pub-
[fol. 5] lic park to worship Almighty God and who were listening to the sermon being delivered which does not constitute disorderly conduct.

(5) If the statute supporting the prosecution is construed and applied by this Court so as to allow a conviction of the defendant under the facts and circumstances of these causes, because of his exercise of his civil rights in the public park, then it unlawfully abridges and denies him his right of freedom of conscience, freedom of speech, freedom of assembly and freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution and the Declaration of Rights of the Constitution of Maryland.

Wherefore the defendant prays that this Court direct and instruct the jury to return a verdict in his favor and tell the jury to find the defendant not guilty.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendant.

[File endorsement omitted.]

Overruled.
Nov. 29, 1949.

Frederick Lee Cobourn.

IN CIRCUIT COURT FOR HARFORD COUNTY

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT—
Filed November 29, 1949

Now comes the defendant in the above entitled and numbered cause, after the return of the verdict of guilty in this cause, and moves the Court to set aside the verdict and render and enter a judgment notwithstanding the verdict whereby the defendant is acquitted of the charge and the prosecution is dismissed for each of the following reasons:

(1) The undisputed evidence shows that the defendant is not guilty as charged in the complaint.

[fol. 6] (2) The prosecution has wholly failed to prove that the defendant committed the offense of disorderly conduct.

(3) There is no evidence to support a finding and judgment of guilty.

(4) The undisputed evidence shows that the defendant, at the time of his arrest, was a minister delivering a sermon on a scriptural subject to an audience gathered in the public park to worship Almighty God and who were listening to the sermon being delivered, which does not constitute disorderly conduct.

(5) The statute supporting the prosecution has been construed and applied by this Court so as to allow a conviction of the defendant under the facts and circumstances of this cause, because of his exercise of his civil rights in the public park, so as to unlawfully abridge and deny him his right of freedom of conscience, freedom of speech, freedom of assembly and freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution and the Declaration of Rights of the Constitution of Maryland.

Wherefore the defendant prays that this Court set aside the verdict and render and enter a judgment notwithstanding the verdict whereby the prosecution is ordered dismissed and the defendant is acquitted.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendant.

[File endorsement omitted.]

Motion Overruled.
Nov. 29, 1949. Frederick Lee Cobourn.

[fol. 7] IN CIRCUIT COURT FOR HARFORD COUNTY

MOTION FOR NEW TRIAL—Filed November 29, 1949

Now comes the defendant in the above entitled and numbered cause, after the return of the verdict of guilty in these cause, and moves the Court to set aside the verdict and order a new trial because of the following reasons:

(1) The Court erred in rulings upon the evidence, both of exclusion and admission of proof.

(2) The Court erred in denying the motion to enter a judgment of acquittal.

(3) The Court erred in denying the motion for instructed verdict.

(4) The Court erred in denying the motion for judgment notwithstanding the verdict.

(5) The Court erred in charging the jury in the erroneous particulars specified by the defendant's counsel.

(6) The Court erred in refusing the defendant's requested instructions to charge the jury.

(7) The verdict and judgment each is contrary to law.

(8) The verdict is contrary to the evidence.

(9) The verdict is unsupported by any facts, any evidence and the law.

(10) The undisputed evidence shows that the defendant is not guilty as charged in the complaint.

(11) The prosecution has wholly failed to prove that the defendant committed the offense of disorderly conduct.

(12) There is no evidence to support a finding and judgment of guilty.

(13) The undisputed evidence shows that the defendant, at the time of his arrest, was a minister delivering a sermon on a scriptural subject to an audience gathered in the public park to worship Almighty God and who were listening to the sermon being delivered, which does not constitute disorderly conduct.

[fol. 8] (14) The statute supporting the prosecution has been construed and applied by this Court so as to allow a

conviction of the defendant under the facts and circumstances of this cause, because of his exercise of his civil rights in the public park, so as to unlawfully abridge and deny him his rights of freedom of conscience, freedom of speech, freedom of assembly and freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution and the Declaration of Rights of the Constitution of Maryland.

Wherefore the defendant prays that the Court enter an order setting aside the verdict and granting a new trial for each of the foregoing reasons.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendant.

[File endorsement omitted.]

Motion overruled.
Nov. 29, 1949.

Frederick Lee Cobourn.

IN CIRCUIT COURT FOR HARFORD COUNTY

DESIGNATION OF PARTS TO BE INCLUDED IN RECORD—Filed December 10, 1949

To the Clerk of the Circuit Court for Harford County, Sir:

You will please prepare a full and complete transcript to be used upon the petition for writ of certiorari that is to be made in this case to the Court of Appeals.

In preparing the record you will include one copy of each of the papers filed in the case. The papers should, among other things, contain the following:

(1) All of the papers sent up from the Magistrate's Court of Havre de Grace.

(2) The docket entries of this Court.

(3) The stenographic transcript of the testimony.

[fol. 9] (4) The motion for dismissal.

(5) The motion for instructed verdict.

(6) The motion for judgment notwithstanding verdict.

(7) The motion for new trial.

(8) The clerk's certificate showing that the transcript includes the entire record in this case.

When the transcript is prepared mail it to Hayden C. Covington, attorney at law, 117 Adams Street, Brooklyn 1, New York, for filing in the Court of Appeals at Annapolis.

Respectfully requested, Harry Yaffe, Equitable Building, Baltimore, Maryland. Hayden C. Covington, Attorney for Defendant.

[File endorsement omitted.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 10] IN THE CIRCUIT COURT FOR HARFORD COUNTY

STATE OF MARYLAND VS. DANIEL NIEMOTKO

ADDITIONAL DOCKET ENTRIES

Jan. 27, 1950. Petition for certiorari from Court of Appeals to Circuit Court fd.

Jan. 27, 1950. Petition for appeal, statement, assignments of error and prayer for reversal fd.

Jan. 27, 1950. Statement as to jurisdiction fd.

Jan. 27, 1950. Bond for appeal fd.

Jan. 27, 1950. Citation fd.

Jan. 27, 1950. Notice calling attention to Appellee as to rule 12 fd.

Jan. 27, 1950. Order allowing appeal to the Supreme Court of the United States fd.

Jan. 27, 1950. Statement of points to be relied upon fd.

Jan. 27, 1950. Praecipe for transcript of the record to the Supreme Court of the United States fd.

Jan. 30, 1950. Acknowledgement of service of copy of papers on appeal, by Appellee fd.

[fol. 11] In Circuit Court for Harford County, State of Maryland

State of Maryland

v.

Daniel Niemotko, Defendant-Appellant

On Appeal to the Supreme Court of the United States

Petition for Appeal, Statement, Assignments of Error and Prayer for Reversal—Filed January 27, 1950

Petition for Appeal

Considering himself aggrieved by the final decision of the Circuit Court for Harford County, State of Maryland, in the above entitled cause, the appellant herein, Daniel Niemotko, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order allowing same and fixing the amount of the bond thereon.

Statement

This case is one in which the validity of state legislation is drawn in question, to wit, Section 131 of Article 27 of the Code of Public Laws of Maryland, reading as follows:

> Every person who shall be found drunk, or acting in a disorderly manner, to the disturbance of the public peace, upon any public street or highway, in any city, town or county, in this State, or at any place of public worship or public resort or amusement in any city, town or county of this state, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not more than fifty dollars, or be confined in jail for a period of not more than Sixty days or be both fined and imprisoned in the discretion of the court. Habitual offenders may be fined not more than one hundred dollars or committed to jail for not more than six months. An habitual offender is a person who shall have been convicted under the provisions of this [fol. 12] section five (5) times in the preceding (12) months. The trial magistrates of the respective counties of this State shall have concurrent jurisdiction over

such offenses with the circuit court for their respective counties; and police magistrates selected to sit at the respective station houses in the city of Baltimore shall have concurrent jurisdiction over such offense with the criminal court of Baltimore City. (Annotated Code of Maryland, Article 27, Section 131, 1943 Supplement)

Said statute was in force and effect at the time of the offenses alleged in the complaint. It is drawn in question upon the ground that it is repugnant to the First and Fourteenth Amendments to the United States Constitution.

Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2) and 28 U. S. C. § 1257 (2) and Section 237 (a) of the Judicial Code, the appellant respectfully shows this court that this case is one in which, under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U. S. C. § 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

Assignments of Error

Now comes the appellant in the above cause and files herewith, together with his petition for appeal, these assignments of error and says that they are errors committed by this court and the court below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the Supreme Court of the United States says that this court erred in the judgment of conviction entered against appellant because

(1) The statute, insofar as it has been construed and applied by this court and the court below, constitutes an unreasonable abridgment of the rights of the appellant to [fol. 13] freedom of speech, assembly and worship, contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The use to which the public park has been put by the appellant is similar to that of orthodox worshipers and preachers in church buildings where people worship and thus the constitutional limitations applicable to statutes insofar as they affect worship by people in buildings like-

wise apply to the use of the public park by appellant in connection with preaching in this case.

(3) The statute is unconstitutional insofar as it has been construed and applied by this court and the court below because it discriminates arbitrarily against Jehovah's witnesses and in favor of others in respect to the use of the public park, incidental to providing them with spiritual instruction, guidance and training through public preaching in the park.

(4) The statute in question is unconstitutional insofar as it has been construed and applied by this court and the court below because there is no reasonable relation between the evil aimed at and the means employed to reach it under the circumstances of this case.

(5) As it has been construed and applied by this court and the court below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, assembly and worship, the statute is presumptively unconstitutional, and which presumption the State has failed to overcome by a showing that the enforcement of the statute is reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of a state to regulate use of a public park.

(6) The statute is unconstitutional as construed and applied by this court and the court below in that it is not a [fol. 14] regulatory law as to the time, place and manner of use of the park, but is prohibitory and provides for censorship, conferring arbitrary discretionary powers upon the Chief of Police, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

(7) The statute supporting the prosecution has been construed and applied by this court so as to allow a conviction of appellant under the facts and circumstances of this cause, because of his exercise of his civil rights in the public park, so as to unlawfully abridge and deny him his right of freedom of conscience, freedom of speech, freedom of assembly and freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution.

PRAYER FOR REVERSAL

For and on account of the above errors, the appellant, Daniel Niemotko, prays that the said judgment of the Circuit Court for Harford County, Maryland, hereinbefore described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of appellant and for his costs.

Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York, Attorney for Appellant.

[fol. 15-43] Bond on appeal for $500.00 approved and filed January 27, 1950, omitted in printing.

[fol. 44] Citation in usual form, filed Jan. 27, 1950, omitted in printing.

[fol. 45] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. —.

DANIEL NIEMOTKO, Appellant,

v.

STATE OF MARYLAND

ORDER ALLOWING APPEAL—Filed January 27, 1950

The appellant in the above-entitled cause, having prayed for the allowance of an appeal to the Supreme Court of the United States from the judgment made and entered therein by the Circuit Court for Harford County, Maryland, on the 29th day of November, 1949, and having presented his petition for appeal, assignment of errors, prayer for reversal, and statement as to jurisdiction, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It Is Now Here Ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Circuit Court for Harford County, Maryland, in the above-entitled cause, as provided by law, and it

is further ordered that the clerk of the Circuit Court for Harford County, Maryland, shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said Court within thirty days of this date;

And it is further ordered that security for costs on appeal be fixed in the sum of $500.00.

It is further ordered that execution and enforcement of the judgment of the Circuit Court for Harford County, Maryland, be stayed pending the disposition of this case by this Court.

Fred M. Vinson, Chief Justice of the United States.

Dated this 24th day of January, 1950.

[fols. 46-48] [File endorsement omitted.]

[fol. 49] CIRCUIT COURT FOR HARFORD COUNTY, STATE OF MARYLAND

STATE OF MARYLAND

v.

DANIEL NIEMOJKO, Defendant-Appellant

On Appeal to the Supreme Court of the United States

PRAECIPE FOR TRANSCRIPT OF THE RECORD

To the Clerk of the Circuit Court for Harford County:

Please incorporate the following documents into the transcript of the record on appeal to the Supreme Court of the United States, which appeal has been heretofore prayed for and allowed from the final judgment in the above-entitled action, to wit:

1. The complete certified typewritten transcript of all the papers filed in this cause, which was prepared for use upon the application for a writ of certiorari from the Court of Appeals of Maryland to the Circuit Court for Harford County.

2. The complete certified transcript of the testimony and proceedings had of this case at the trial before the Circuit

Court on the 28th and 29th day of November, 1949, which was filed in this cause with this Court on the 27th day of December, 1949.

3. The docket entries that appear in this Court since the 27th day of December, 1949, to this date.

4. Petition for appeal, statement, assignments of error and prayer for reversal.

5. Statement as to Jurisdiction.

[fol. 50] 6. Bond for costs, etc., on appeal to the Supreme Court of the United States.

7. Citation.

8. Order allowing appeal to the Supreme Court of the United States.

9. Statement of Points to be Relied Upon.

10. Acknowledgment of Service by counsel for appellee.

11. This praecipe and proof of service thereof.

Dated at Brooklyn, New York, this 25th day of January, 1950.

Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York, Attorney for Appellant.

[fol. 51] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 52] In the Circuit Court for Harford County

State of Maryland vs. Neil W. Kelley

Docket Entries

Disorderly Conduct

July 12, 1949. Certified copy of Docket entries, warrant and appeal Bond fd.

Nov. 14, 1949. App. of Harry Yaffe, Esq. for deft. (short)

Nov. 21, 1949. App. of H. C. Covington, Esq. for deft. (short)

Nov. 21, 1949. Taken up before the court and a jury and testimony heard and not concluded.

Nov. 29, 1949. Testimony resumed and concluded.

Nov. 29, 1949. Motion to dismiss filed by defendant with order of court thereon overruling said motion.

Nov. 29, 1949. Motion of defendant for instructed Verdict, with order of court thereon overruling motion fd.

Nov. 29, 1949. Verdict Guilty.

Nov. 29, 1949. Motion of defendant for judgment N.O.V. and order of court overruling motion fd.

Nov. 29, 1949. Judgment and sentence of the court that the defendant pay a fine of $50.00 and costs.

Nov. 29, 1949. Motion for new trial fd.

Nov. 29, 1949. Motion overruled, per order fd.

Dec. 10, 1949. Designation of parts to be included in record fd.

Dec. 27, 1949. Testimony filed.

[fol. 53] In Magistrate's Court of Havre de Grace

Warrant

State of Maryland,

Harford County, to wit:

To Raymond Fulker, Sheriff of said County

Greetings:

Whereas, Complaint has been made before me, the subscriber, one of the Justices of the Peace of the State of Maryland, in and for said county, upon information and oath of Walter L. Walker, who charges Neil Webster Kelley with having on the 3rd day of July, 1949 at Harford County aforesaid, unlawfully acted in a disorderly manner, in Havre de Grace, Harford County, Maryland contrary to the form of the Act of Assembly in such case made and provided, and against the peace, government and dignity of the State.

You are therefore commanded immediately to apprehend the said Neil Webster Kelley and bring him before me, the subscriber, or some other Justice of the said State, in and for Harford County, as aforesaid, to be dealt with according to law. Hereof fail not, and have you then and there this warrant.

Given under my hand and seal this 3rd day of July in the year of our Lord 1949.

Harry E. Dyer, Sr., Committing Magistrate. J. P.
(Seal.)

In Magistrate's Court of Havre de Grace

Docket Entries

July 3/49 State warrant issued to Raymond Fulker, Sheriff of Harford County, by Harry Dyer, Committing Magistrate, upon oath of Walter Walker, who charges Neil W. Kelley with disorderly conduct in Harford County, State of Maryland, on or about July 3/49.

Returned "Cepi". $54.00 cash bond posted for appearance July 11, 1949. July 11/49 trial held. Plea of not guilty. Jury trial waived by defendant. Found guilty. Fined [fol. 54] $50.00 and $6.00 costs.

Appeal entered. Chris Kalmbacher surety in amount of $200.00. Transcript July 12, 1949.

As Witness: G. Howlett Cobourn.

I hereby certify that the above is a true copy of my docket entries.

G. Howlett Cobourn, J.P.

[File endorsement omitted:]

In Circuit Court for Harford County

Motion to Dismiss—Filed November 29, 1949

Now comes the defendant, Neil W. Kelley, at the close of all the evidence, and moves for a finding of "not guilty" and for a judgment dismissing the complaint upon the following grounds:

(1) The undisputed evidence shows that the defendant is not guilty as charged in the complaint.

(2) The prosecution has wholly failed to prove that the defendant committed the offense of disorderly conduct.

(3) There is no evidence to support a finding and judgment of guilty.

(4) The undisputed evidence shows that the defendant, at the time of his arrest, was a minister delivering a sermon on a scriptural subject to an audience gathered in the public park to worship Almighty God and who were listening to

the sermon being delivered, which does not constitute disorderly conduct.

(5) If the statute supporting the prosecution is construed and applied by this Court so as to allow a conviction of the defendant under the facts and circumstances of this case, because of his exercise of his civil rights in the public [fol. 55] park, then it unlawfully abridges and denies him his right of freedom of conscience, freedom of speech, freedom of assembly and freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution and the Declaration of Rights of the Constitution of this State.

Wherefore the defendant prays that this Court enter a judgment discharging the defendant upon a finding of not guilty.

Neil W. Kelley, Defendant. Harry Yaffe, Hayden C. Covington, by Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York, His Counsel.

[File endorsement omitted:]

Motion overruled Nov. 29, 1949. Frederick Lee Cobourn.

IN CIRCUIT COURT FOR HARFORD COUNTY

MOTION FOR INSTRUCTED VERDICT—Filed November 29, 1949

Now comes the defendant in the above entitled and numbered cause, at the close of all the evidence, and moves the Court to direct and instruct the Jury to return a verdict in favor of the defendant and find the defendant "not guilty" for each of the following reasons:

(1) The undisputed evidence shows that the defendant is not guilty as charged in the complaint.

(2) The prosecution has wholly failed to prove that the defendant committed the offense of disorderly conduct.

(3) There is no evidence to support a finding and judgment of guilty.

(4) The undisputed evidence shows that the defendant, at the time of his arrest, was a minister delivering a sermon

on a scriptural subject to an audience gathered in the public [fol. 56] park to worship Almighty God and who were listening to the sermon being delivered, which does not constitute disorderly conduct.

(5) If the statute supporting the prosecution is construed and applied by this Court so as to allow a conviction of the defendant under the facts and circumstances of this cause, because of his exercise of his civil rights in the public park, then it unlawfully abridges and denies him his right of freedom of conscience, freedom of speech, freedom of assembly and freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution and the Declaration of Rights of the Constitution of Maryland.

Wherefore the defendant prays that this Court direct and instruct the jury to return a verdict in his favor and tell the jury to find the defendant not guilty.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendant.

[File endorsement omitted:]

Overruled Nov. 29, 1949. Frederick Lee Cobourn.

IN CIRCUIT COURT FOR HARFORD COUNTY

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT—Filed November 29, 1949

Now comes the defendant in the above entitled and numbered cause, after the return of the verdict of guilty in this cause, and moves the Court to set aside the verdict and render and enter a judgment notwithstanding the verdict whereby the defendant is acquitted of the charge and the prosecution is dismissed for each of the following reasons:

(1) The undisputed evidence shows that the defendant is not guilty as charged in the complaint.

[fol. 57] (2) The prosecution has wholly failed to prove that the defendant committed the offense of disorderly conduct.

(3) There is no evidence to support a finding and judgment of guilty.

(4) The undisputed evidence shows that the defendant, at the time of his arrest, was a minister delivering a sermon on a scriptural subject to an audience gathered in the public park, to worship Almighty God and who were listening to the sermon being delivered, which does not constitute disorderly conduct.

(5) The statute supporting the prosecution has been construed and applied by this Court so as to allow a conviction of the defendant under the facts and circumstances of this cause, because of his exercise of his civil rights in the public park, so as to unlawfully abridge and deny him his right of freedom of conscience, freedom of speech, freedom of assembly and freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution and the Declaration of Rights of the Constitution of Maryland.

Wherefore the defendant prays that this Court set aside the verdict and render and enter a judgment notwithstanding the verdict whereby the prosecution is ordered dismissed and the defendant is acquitted.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendant.

Motion Overruled. Nov. 29, 1949. Frederick Lee Colbourn.

[fol. 58] In Circuit Court for Harford County

Motion for New Trial—Filed November 29, 1949

Now comes the defendant in the above entitled and numbered cause, after the return of the verdict of guilty in this cause, and moves the Court to set aside the verdict and order a new trial because of the following reasons:

(1) The Court erred in rulings upon the evidence, both of exclusion and admission of proof.

(2) The Court erred in denying the motion to enter a judgment of acquittal.

(3) The Court erred in denying the motion for instructed verdict.

(4) The Court erred in denying the motion for judgment notwithstanding the verdict.

(5) The Court erred in charging the jury in the erroneous particulars specified by the defendant's Counsel.

(6) The Court erred in refusing the defendant's requested instructions to charge the jury.

(7) The verdict and judgment each is contrary to law.

(8) The verdict is contrary to the evidence.

(9) The verdict is unsupported by any facts, any evidence and the law.

(10) The undisputed evidence shows that the defendant is not guilty as charged in the complaint.

(11) The prosecution has wholly failed to prove that the defendant committed the offense of disorderly conduct.

(12) There is no evidence to support a finding and judgment of guilty.

(13) The undisputed evidence shows that the defendant, at the time of his arrest, was a minister delivering a sermon on a scriptural subject to an audience gathered in the public park to worship Almighty God and who were listen-[fol. 59] ing to the sermon being delivered, which does not constitute disorderly conduct.

(14) The statute supporting the prosecution has been construed and applied by this Court so as to allow a conviction of the defendant under the facts and circumstances of this cause, because of his exercise of his civil rights in the public park, so as to unlawfully abridge and deny him his rights of freedom of conscience, freedom of speech, freedom of assembly and freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution and the Declaration of Rights of the Constitution of Maryland.

Wherefore the defendant prays that the Court enter an order setting aside the verdict and granting a new trial for each of the foregoing reasons.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendant.

[File endorsement omitted.]

Motion overruled.
Nov. 29, 1949.

Frederick Lee Cobourn.

IN CIRCUIT COURT FOR HARFORD COUNTY

DESIGNATION OF PARTS TO BE INCLUDED IN RECORD—Filed December 10, 1949

To the Clerk of the Circuit Court for Harford County, Sir:

You will please prepare a full and complete transcript to be used upon the petition for writ of certiorari that is to be made in this case to the Court of Appeals.

In preparing the record you will include one copy of each of the papers filed in the case. The papers should, among other things, contain the following:

(1) All of the papers sent up from the Magistrate's Court [fol. 60] of Havre de Grace.

(2) The docket entries of this Court.

(3) The stenographic transcript of the testimony.

(4) The motion for dismissal.

(5) The motion for instructed verdict.

(6) The motion for judgment notwithstanding verdict.

(7) The motion for new trial.

(8) The clerk's certificate showing that the transcript includes the entire record in this case.

When the transcript is prepared mail it to Hayden C. Covington, attorney at law, 117 Adams Street, Brooklyn 1, New York, for filing in the Court of Appeals at Annapolis.

Respectfully requested, Harry Yaffe, Equitable Building, Baltimore, Maryland; Hayden C. Covington, Attorney for Defendant.

[File endorsement omitted.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 61] In the Circuit Court for Harford County

State of Maryland

vs.

Neil W. Kelley

Additional Docket Entries

Jan. 27, 1950. Petition for certiorari from Court of Appeals to Circuit Court fd.

Jan. 27, 1950. Petition for appeal, statement, assignments of error and prayer for reversal fd.

Jan. 27, 1950. Statement as to jurisdiction fd.

Jan. 27, 1950. Bond for appeal fd.

Jan. 27, 1950. Citation fd.

Jan. 27, 1950. Notice calling attention to Appellee as to rule 12 fd.

Jan. 27, 1950. Order allowing appeal to the Supreme Court of the United States fd.

Jan. 27, 1950. Statement of points to be relied upon fd.

Jan. 27, 1950. Praecipe for transcript of the record to the Supreme Court of the United States fd.

Jan. 30, 1950. Acknowledgment of service of copy of papers on appeal, by Appellee, fd.

[fol. 62] In Circuit Court for Harford County, State of Maryland

State of Maryland

v.

Neil W. Kelley, Defendant-Appellant

On Appeal to the Supreme Court of the United States

Petition for Appeal, Statement, Assignments of Error and Prayer for Reversal—Filed January 27, 1950

Petition for Appeal

Considering himself aggrieved by the final decision of the Circuit Court for Harford County, State of Maryland, in the above entitled cause, the appellant herein, Neil W. Kelley, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order allowing same and fixing the amount of the bond thereon.

Statement

This case is one in which the validity of state legislation is drawn in question, to wit, Section 131 of Article 27 of the Code of Public Laws of Maryland, reading as follows:

> Every person who shall be found drunk, or acting in a disorderly manner, to the disturbance of the public peace, upon any public street or highway, in any city, town or county, in this State, or at any place of public worship or public resort or amusement in any city, town or county of this state, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not more than fifty dollars, or be confined in jail for a period of not more than Sixty days or be both fined and imprisoned in the discretion of the court. Habitual offenders may be fined not more than one hundred dollars or committed to jail for not more than six months. An habitual offender is a person who shall have been convicted under the pro[fol. 63] visions of this section five (5) times in the preceding (12) months. The trial magistrates of the respective counties of this State shall have concurrent

jurisdiction over such offenses with the circuit court for their respective counties; and police magistrates selected to sit at the respective station houses in the city of Baltimore shall have concurrent jurisdiction over such offense with the criminal court of Baltimore City. (Annotated Code of Maryland, Article 27, Section 131, 1943 Supplement.)

Said statute was in force and effect at the time of the offenses alleged in the complaint. It is drawn in question upon the ground that it is repugnant to the First and Fourteenth Amendments to the United States Constitution.

Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2) and 28 U. S. C. § 1257 (2) and Section 237 (a) of the Judicial Code, the appellant respectfully shows this Court that this case is one in which, under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U. S. C. § 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

Assignments of Error

Now comes the appellant in the above cause and files herewith, together with his petition for appeal, these assignments of error and says that they are errors committed by this court and the court below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the Supreme Court of the United States says that this court erred in the judgment of conviction entered against appellant because

(1) The statute, insofar as it has been construed and applied by this court and the court below, constitutes an unreasonable abridgment of the rights of the appellant to [fol. 64] freedom of speech, assembly and worship, contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The use to which the public park has been put by the appellant is similar to that of orthodox worshipers and preachers in church buildings where people worship and thus the constitutional limitations applicable to statutes insofar as they affect worship by people in buildings like

wise apply to the use of the public park by appellant in connection with preaching in this case.

(3) The statute is unconstitutional insofar as it has been construed and applied by this court and the court below because it discriminates arbitrarily against Jehovah's witnesses and in favor of others in respect to the use of the public park, incidental to providing them with spiritual instruction, guidance and training through public preaching in the park.

(4) The statute in question is unconstitutional insofar as it has been construed and applied by this court and the court below because there is no reasonable relation between the evil aimed at and the means employed to reach it under the circumstances of this case.

(5) As it has been construed and applied by this court and the court below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, assembly and worship, the statute is presumptively unconstitutional, and which presumption the State has failed to overcome by a showing that the enforcement of the statute is reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of a state to regulate use of a public park.

(6) The statute is unconstitutional as construed and applied by this court and the court below in that it is not a [fol. 65] regulatory law as to the time, place and manner of use of the park, but is prohibitory and provides for censorship, conferring arbitrary discretionary powers upon the Chief of Police, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

(7) The statute supporting the prosecution has been construed and applied by this court so as to allow a conviction of appellant under the facts and circumstances of this cause, because of his exercise of his civil rights in the public park, so as to unlawfully abridge and deny him his right of freedom of conscience, freedom of speech, freedom of assembly and freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution.

PRAYER FOR REVERSAL

For and on account of the above errors, the appellant, Neil W. Kelley, prays that the said judgment of the Circuit Court for Harford County, Maryland, hereinbefore described in the above-entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of appellant and for his costs.

Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York, Attorney for Appellant.

[fols. 66-68] Bond on appeal for $500.00 approved and filed Jan. 27, 1950, omitted in printing.

[fol. 69] Citation in usual form, filed Jan. 27, 1950, omitted in printing.

[fols. 70-71] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

No. —

NEIL W. KELLEY, Appellant,

v.

STATE OF MARYLAND

ORDER ALLOWING APPEAL—Filed January 27, 1950

The appellant in the above-entitled cause, having prayed for the allowance of an appeal to the Supreme Court of the United States from the judgment made and entered therein by the Circuit Court for Harford County, Maryland, on the 29th day of November, 1949, and having presented his petition for appeal, assignment of errors, prayer for reversal, and statement as to jurisdiction, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Circuit Court for Harford County, Maryland, in the above-entitled cause, as provided by law, and it is fur-

ther ordered that the clerk of the Circuit Court for Harford County, Maryland, shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States, so that he shall have the same in said court within thirty days of this date;

And it is further ordered that security for costs on appeal be fixed in the sum of $500.00.

It is further ordered that execution and enforcement of the judgment of the Circuit Court for Harford County, Maryland, be stayed pending the disposition of this case by this Court.

Fred M. Vinson, Chief Justice of the United States.

Dated this 24th day of January, 1950.

[fol. 72] CIRCUIT COURT FOR HARFORD COUNTY, STATE OF MARYLAND

STATE OF MARYLAND

v.

NEIL W. KELLEY, Defendant-Appellant

On Appeal to the Supreme Court of the United States

PRAECIPE FOR TRANSCRIPT OF THE RECORD—Filed January 27, 1950

To the Clerk of the Circuit Court for Harford County:

Please incorporate the following documents into the transcript of the record on appeal to the Supreme Court of the United States, which appeal has been heretofore prayed for and allowed from the final judgment in the above-entitled action, to wit:

1. The complete certified typewritten transcript of all the papers filed in this cause, which was prepared for use upon the application for a writ of certiorari from the Court of Appeals of Maryland to the Circuit Court for Harford County.

2. The complete certified transcript of the testimony and proceedings had of this case at the trial before the Circuit

Court on the 28th and 29th days of November, 1949, which was filed in this cause with this Court on the 27th day of December, 1949.

3. The docket entries that appear in this Court since the 27th day of December, 1949, to this date.

4. Petition for appeal, statement, assignments of error and prayer for reversal.

5. Statement as to Jurisdiction.

[fol. 73] 6. Bond for costs, etc., on appeal to the Supreme Court of the United States.

7. Citation.

8. Order allowing appeal to the Supreme Court of the United States.

9. Statement of Points to be Relied Upon.

10. Acknowledgment of Service by counsel for appellee.

11. This Praecipe and proof of service thereof.

Dated at Brooklyn, New York, this 25th day of January, 1950.

Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York, Attorney for Appellant.

[fol. 74] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1] [File endorsement omitted]

IN THE CIRCUIT COURT FOR HARFORD COUNTY

Consolidated Cases

STATE OF MARYLAND

vs.

DANIEL NIEMOTKO, and NEIL W. KELLER

Reporter's Transcript of Trial Proceedings Filed December 27, 1949

The above entitled cases came on for a hearing in the Circuit Court for Harford County before the Hon. Frederick Lee Cobourn and a jury on Monday, the twenty-eighth day

of November, in the year of our Lord nineteen hundred and forty-nine, at 10.00 o'clock A. M.

APPEARANCES

D. Paul McNabb, Esquire, present on behalf of the State.

Hayden Covington, Harry Yaffe, Esquires, present on behalf of the Defense.

COLLOQUY

The Court: Can it be agreed that these two cases be tried together?

[fol. 2] Mr. Covington: I was just going to make that suggestion, your Honor.

The Court: Then it is agreed that these two cases will be tried together?

Mr. Covington: Yes, your Honor.

Mr. Yaffe: We would like to question the jurors on their voir dire, your Honor.

The Court: This is a simple misdemeanor; and, under our law, you are not entitled to do that.

Mr. Covington: We formally make a motion to the Court now that we have the privilege of examining the jurors separately and independently so that we can intelligently exercise our peremptory challenges and challenges for cause in this case. In this case there has been a lot of local feeling in Havre de Grace, and a great deal of newspaper publicity given these cases; and we would like to have the opportunity to question the jurors separately and independantly to see if any preconceived notions have been reached in these cases and in order that we may properly [fol. 3] determine their qualifications, and can intelligently exercise our challenges, as we are not individually acquainted with the jurors as are the Court and State's Attorney. I now move that we be allowed to question each member of this jury on his voir dire. If we are denied that right, I take the position that we are not having a trial by a jury as guaranteed by the constitution of this State.

The Court: The motion will be overruled.

Mr. Covington: We will note an exception now, your Honor.

Mr. Covington: I now make a motion that we be allowed eight peremptory challenges instead of four, because there

are two defendants, and there are two separate charges, although these cases are being consolidated.

The Court: That motion will also be overruled.

Mr. Covington: And we will also note an exception now, your Honor.

The Court: (After the jury had been chosen and sworn) [fol. 4] You will understand that there are two cases and two defendants, although for convenience, by agreement of counsel, they are being tried as one case, as they are covered by much the same circumstances. Although they are being tried together, at the end of the case you will be required to render separate verdicts as to each defendant.

Mr. Covington: Now, your Honor, I would like to make a motion out of the presence of the jury.

Thereupon the jury was taken to the jury room by the bailiff.

Mr. Covington: At this time the defendants move to quash and discharge this jury panel because they are dissatisfied with the jury as selected in this case for the reason that they were deprived of eight peremptory challenges, and denied the right to exercise any challenges for cause,—to determine if there was any prejudice against or preconceived notions about the defendants.

The Court: That is the same matter presented in the [fol. 5] former motion.

Mr. Covington: The same matter, your Honor, but on a different ground.

The Court: The motion will be overruled.

Mr. Covington: We will note an exception, your Honor.

The Court: Mr. Bailiff, you can bring the jury back now.

Thereupon the opening statement to the jury on behalf of the State was made by Mr. McNabb.

The Court: Does the Defense wish to reserve its opening statement, or will you make it now?

Mr. Covington: I will make it now, your Honor.

Thereupon the opening statement to the jury on behalf of the Defense was made by Mr. Covington.

Thereupon Robert R. Lawder, a witness of lawful age, being produced on behalf of the State, first being duly sworn, testified as follows:

The Direct examination

By Mr. McNabb:

[fol. 6] Q. Mr. Lawder will you give us your full name?
A. Robert R. Lawder.
Q. You are the Mayor of Havre de Grace?
A. Yes sir.
Q. How long have you been Mayor of Havre de Grace?
A. Since 1939——
Q. You qualified for your present term upon what date?
A. On May 15th, 1949.

Mr. Covington: How long is a term?
The Witness: Two years.
Mr. Covington: And when did you qualify for your last term?
The Witness: On May 15th, 1949.

Q. Does the Mayor and City Council have charge of the park in Havre de Grace?
A. I think we do.
Q. You exercise authority over it?
A. Yes sir.
Q. What is the procedure in reference to the use of the park,—when anyone wishes to use that park?

Mr. Covington: I object——
[fol. 7] The Court: Objection overruled.
Mr. Covington: We will note an exception, your Honor.

A. It is always our practice that, when anyone wishes to use any of the city property, they make a request to the Chairman of the Committee that is in charge of that particular property, or the Mayor of the City.
Q. I am asking you if any request was made by Jehovah's Witnesses for the use of the park in June, 1949?
A. Yes sir,—that is they applied to Mr. Hollohan, Chairman of the Park and Harbor Commission, and I understand he denied them.
Q. Go ahead?
A. Mr. Laupert and Mr. Hopkins came to my house on the Friday night following and told me what had happened, and said that they were going to use the park the following Sunday whether Mr. Hollohan said they could or not. I told them that that was not the proper procedure,—that

they should appeal to the City Council, which was meeting on the following Monday. I further advised them to come [fol. 8] to the City Council and make their request, stating the purpose for which they wanted to hold the meeting, and that I felt sure that their request would be granted. They thanked me for my advice and said they would do so. The following Monday night they appeared before the Mayor and City Council. I thought they were going to ask permission to use the City Park for a religious meeting, but instead they started to berate Mr. Hollohan, Chairman of the Park Commission, for the action that he had taken. That did not seem to set very well with the other councilmen, and they started to ask these gentlemen some questions.

Q. What questions?

A. The first question asked was whether their organization would salute the American Flag, and their answer was "No, that they regarded it as another piece of old rag." The next question was whether or not they would fight to preserve the privileges about which they talked so much as being guaranteed under the constitution,—privileges that had been won by our forefathers, and preserved by the blood [fol. 9] of our sons, and they said they would not do that. Naturally I let the matter go further than possibly I should have——

Mr. Covington: I move to strike out that opinion.

The Court: Motion overruled.

Mr. Covington: We will note an exception, your Honor.

Q. You presided at this meeting?

A. Yes sir.

Q. As Chairman of the City Council?

A. That's right.

Q. What happened then?

A. Mr. McNabb, without going into all of the details leading up to it, there was a motion that was unanimously carried denying them the use of the City Park for the following two Sundays.

Q. Do you know who made that motion and who seconded it?

A. Without the record, I could not say. The Clerk is here and will give you all that.

[fol. 10] Q. The result of this vote was to deny them the use of the City Park on the occasion of June 26th?

A. Yes sir,—I think that that is the date.

Q. The meeting was to be held the following Sunday?

A. I think that that is correct.

Q. What was the next thing that was done either by representatives of Jehovah's Witnesses or by representatives of the Mayor and City Council?

A. The next thing that was brought to my attention was a movement gathering force in Havre de Grace by a group——

Mr. Covington: I object. This was said out of the presence of the defendants, and we are not interested in movements.

Mr. McNabb: This all has to do with this matter.

The Court: Objection overruled.

Mr. Covington: We will note an exception, your Honor.

The Witness (Continuing): It was brought to my attention that a group was being formed in Havre de Grace,— [fol. 11] that patriotic citizens had made up their mind that this meeting would not be held as scheduled. In my official capacity as Mayor of the City I could not, and would not, allow mob violence. I called Col. Ober of the State Police, and the Sheriff's Office, asking them to detail officers to assist our local police. I was activated, in doing that, solely to prevent mob violence. With the feeling as it was, I did not know what might happen if I did not have proper police protection there to prevent this meeting.

Q. The date of the first meeting charged in the warrant is June 26th, 1949,—were you at the Park at the time that this meeting was to be held?

A. No sir.

Q. Were you there the following Sunday?

A. I was not.

Q. You were not at the park on either of these occasions?

A. No sir,—I was not.

[fol. 12] Q. What you have testified to in a general way was the negotiations between the Mayor and City Council of Havre de Grace and representatives of Jehovah's Witnesses on an application for a permit to use the City Park on these two occasions?

A. That is correct.

Mr. McNabb: That is all.

The Cross-examination.

By Mr. Covington:

Q. Mr. Lawder, what is your occupation?

A. Other than being Mayor of Havre de Grace?

Q. Yes?

A. I am a merchant.

Q. What is your business?

A. Hay and grain.

Q. How long have you been engaged in that business?

A. Thirty-five years.

Q. Now you say that this matter was brought to your attention by Mr. Laupert and Mr. Hopkins who came to your office, or rather to your home?

A. I do not remember Mr. Hollohan talking to me about it, —that is the first time that I had it brought officially to [fol. 13] my attention.

Q. Was it brought to your attention unofficially?

A. Not unless Mr. Hollohan called me on the telephone, and told me generally that they made a request.

Q. I am not interested in your recollections in this case, — what do you recall?

A. I think that he called me on the telephone.

Q. When was that?

A. Some time in the week before Mr. Laupert came to my home.

Q. What did he tell you?

A. He told me just what he had done, —that he had refused permission.

Q. He told you that he had refused them permission to use the park?

A. Yes sir.

Q. Did he tell you why he had refused that permission?

A. I don't know that he gave me any reason. He just said that he had refused them permission and that — his [fol. 14] prerogative.

Q. Weren't you interested in knowing the means and why?

A. Yes sir.

Q. Did you ask him why?

A. I didn't ask him why. I talked to Mr. Laupert and Mr. Hopkins.

Q. What was this talk or conversation that you had with Mr. Hollohan?

A. I don't remember everything that was said over the telephone.

Q. I do not ask you to give the conversation in full——

A. I tried to be fair and reasonable in my decision.

Q. I will assume that?

A. When they came to my home I treated them with all the courtesy in the world.

Q. Tell us what was said over the telephone when you had that conversation with Mr. Hollohan?

Mr. McNabb: I object—he has said that he cannot tell you everything that was said.

Mr. Covington: I object to counsel testifying in this [fol. 15] case.

The Court: Objection overruled.

Mr. Covington: I will note an exception, your Honor.

A. I don't recall.

Q. Do you remember anything of what Mr. Hollohan said?

A. Nothing more than I have already said.

Q. That seems to be that he denied them the permit, and that is all that you remember?

A. Yes sir.

Q. Tell us what took place when Mr. Lampert and Mr. Hopkins came to your home,—what did they do or say?

A. They came there Friday evening and——

Q. What time of the day?

A. It was after dinner,—at night.

Q. Did that conversation take place inside or outside your home?

A. It was in my livingroom.

Q. Tell us what took place,—from the time they came until [fol. 16] they left?

A. I think I testified to that.

Mr. Covington: This is cross-examination and I am trying to get some answers from the witness. I object to him telling me what he has testified to.

The Court: There is nothing before the Court.

Q. Tell me what these gentlemen said when they came there?

A. These gentlemen told me what had transpired between them and Mr. Hollohan.

Q. What was that?

A. That they had asked Mr. Hollohan for the use of the city park for a so-called religious meeting.

Q. Did they say "for a so-called religious meeting"?

A. I did not take any stenographic notes word for word. I am trying to recall as near as possible the gist of what was said at the meeting.

Q. Then don't say "so-called religious meeting",—go ahead?

[fol. 17] A. I did not know that lots of them were religious ministers. He told me that they had been denied the privilege of using the park, and they further told me that they were going to use the park on the next Sunday regardless of whether or not Mr. Hollohan gave them permission to use it. I advised them that that was not the proper way, but that they should make an appeal to the Mayor and City Council. I told them that they should make the appeal, and that there would be another meeting of the City Council on the following Monday night. I advised them to appear before the Mayor and City Council at that time and ask permission to use the city park, and state the reasons why they wanted to use it,—that was all. They thanking me for my advice; and, when they left, they said that they would make the appeal. That is the gist of what happened at my home.

Q. Did they show you, or tell you about a letter that they had filed with Mr. Hollohan?

A. They did.

[fol. 18] Q. Did they show you a copy of that letter?

A. I think they did, sir.

Mr. Covington: I now offer this letter for the purpose of having it marked for identification.

Thereupon the said letter was marked for the purposes of identification.

Q. Did you read that letter?

A. Yes sir.

Q. Was that letter considered by you later at the council meeting?

A. I think that the same letter was presented at the council meeting.

Q. By whom?

A. Mr. Hopkins, I believe.

Q. Now, coming down to the meeting of the Mayor and City Council,—what was the date of that Council meeting?

A. I don't have the records,—the clerk can give you that.

Mr. McNabb: I object,—the clerk is here and he will [fol. 19] testify.

Q. It was on Monday?

A. Monday evening.

Q. On Monday following the second scheduled meeting they talked to you,—they had planned to use the park on Sunday, June 19th?

A. They talked to me about using it the following Sunday.

Q. That the matter was submitted to the Council?

A. I advised them——

Q. Is that the correct date?

A. Yes sir.

Q. And the Council met when?

A. The following Monday evening.

Q. June 20th?

A. It was the following Monday evening.

Q. What first took place at the Council meeting?

A. In so far as their effort was concerned?

A. As far as this letter is concerned,—weren't they there for the consideration of this letter, which has been marked for identification and is dated June 8th, 1949, which you [fol. 20] stated was presented to the Council when the matter of the use of the Park in Havre de Grace came up for consideration by the Council,—tell us what was the first thing that was said?

A. I called upon Mr. Laupert or Mr. Hopkins to present their matter, and I forget which one spoke first.

Q. That is not material?

A. Instead of following my advice and asking for the use of the park for their meeting the following Sunday, they started to berate Mr. Hollohan.

Q. That was the first thing that was said?

A. Yes sir.

Q. Didn't they present this letter first?

A. Some time during the course of debate they presented the letter. I do not recall whether it was at the beginning of the meeting or later on. When the discussion started, they began to berate Mr. Hollohan, a member of the Council.

Q. What did they say?

[fol. 21] A. I did not take any stenographic record of the words they said.

Q. Tell us the substance of it?

A. I don't recall the words they used.

Mr. Covington: I move that the statement of the witness "they began to berate Mr. Hollohan" be stricken from the record.

The Court: Motion overruled.

Mr. Covington: I will note an exception, your Honor.

Q. Do you remember anything they said?

A. I do not remember the words.

Q. You don't remember anything they said?

A. I remember a lot about this case.

Q. You understand what I am aiming at,—I am talking about what they said concerning Mr. Hollohan?

A. They started to criticise Mr. Hollohan for the action that he had taken instead of asking the Mayor and City Council for permission to use the park, and stating for what purpose they wanted to use it. They started to criticise Mr. [fol. 22] Hollohan for the action he had taken.

Q. For denying them the privilege of using the park?

A. Yes sir.

Q. Did Mr. Hollohan have the power to grant the permit?

A. Yes sir, and to refuse it too.

Q. And they had the right to appeal to the Mayor and City Council, and complain about that action?

A. Yes sir.

Q. Do you object to anyone complaining about Mr. Hollohan?

A. Yes sir,—I object to them objecting if they do not do it in a decent way, and I don't think they presented it in that manner. They should have——

Q. You objected because they were complaining about his ruling?

A. It was more than a complaint,—it was the language they used.

Q. What did they say?

A. I did not take a stenographic record of what they [fol. 23] said.

Q. I am not asking you word for word,—give me the substance of what they said?

Mr. McNabb: I object——

The Court: Objection overruled.

A. I have answered that the best I know how.

Q. Can't you remember the substance of anything that they said?

A. I don't remember the words.

The Court: The witness has told you that he has answered that the best he can, and that he does not remember the words that were used.

Mr. Covington: I am not asking for the words, and I consider this ruling by the Court an undue limitation of cross-examination.

The Court: I am not limiting you on your cross-examination. I am simply suggesting that the witness has answered that question as fully and completely as he can. All he knows is that they berated Mr. Hollohan. You may have an exception.

Mr. Covington: I am taking an exception. I want that [fol. 24] question answered and answered properly. I am not asking word for word but the substance of what was said. I take an exception to the ruling of the Court because it is an undue limitation of my pursuing my cross-examination.

Q. After they berated the Park Manager, what was done?

A. I told you the Council started to ask some questions.

Q. What was the first question that was asked?

A. I do not remember what was the first question or the last one, but I can give you the gist of what was asked.

Q. Tell us the first question you remember?

A. The first question was by Mr. McLhinney,—Does this group believe in saluting the American Flag? after quoting the bible——

Q. What was the quotation from the bible?

A. I am not a bible student.

Q. What did you do then?

A. The action——

[fol. 25] Q. Did you give them a fair hearing?

A. I think I stated in my testimony that I let the matter go much further than I should have——

Q. You were not interested in listening to their explanation, were you?

A. Yes sir. Mr. Laupert and Mr. Hopkins were treated with all the respect in the world.

Q. Did you allow them to give their reasons?

A. Yes sir.

Q. What reasons did they give?

A. The matter finally got out of hand, and I exercised my authority as presiding officer of the meeting to stop it.

Q. What reasons did they give?

A. I don't know,—they said they refused to salute the flag.

Q. You were not interested in their reasons for that?

A. I cannot understand any American Citizen refusing to salute the flag in any instance.

[fol. 26] Q. You were not interested in any reason they may have had for not saluting the American Flag?

A. No sir.

Q. What was the next question?

A. They were demanding constitutional privileges,—privileges, as I have stated, that were won by our forefathers and preserved by the blood of our sons, yet they said they would do nothing themselves to preserve these privileges.

Q. Who asked that question?

A. A member of the Council,—I don't remember which one said that because I did not have a stenographer there.

Q. That is why we have to rely in your memory or recollection?

A. I am pretty clear on it.

Q. I think that it has slipped a little and you merely want to give us your impressions. You said they were asked if they would do anything, but you don't explain to us what that was——

A. They were asked if they would fight to preserve these [fol. 27] privileges,—whether they would fight for their country, and they finally answered that "no". I do not know how long they harangued about that without giving a direct answer.

Q. Did you listen?

A. Yes sir.

Q. What did they say?

A. They said "no".

Q. I am asking you what was the explanation they made to you?

A. I did not read all their propaganda or pamphlets to get the answer.

Q. I am asking you what reasons were given by these men at the hearing,—you have said they said "no"?

A. I can't intelligently answer that question because I do not know all of their reasons. For one thing we wanted to know if they would enlist in the United States Army in a time of war to preserve the privileges they were talking so much about. Their final answer was that they would not do it, but they didn't give any reason for not doing it.

[fol. 28] Q. I want you, as a witness sworn to tell the truth, to tell us what they said and what you heard,—tell us their reasons, and not word for word but the substance of what they said. If you can't tell us word for word, then tell us the substance of everything you remember that either of these men said to the Council giving their reasons,—you were present there and heard them?

The Court: The Court rules that this witness has completely answered that question.

Mr. Covington: I will take an exception to that ruling by the Court as being an undue limitation on my right to cross-examine this witness.

Q. What was the next thing, Mr. Mayor?

A. This was the only thing that I asked them personally,—Does your group have any communistic leanings? and again they did not answer the question without quotations, and going all over the river hills to get to the post-office, and finally I did not get any positive answer then.

Q. What did they say?

[fol. 29] A. That is the same question, your Honor, and I can't answer it.

Q. What is the substance of what they said?

A. The substance of the matter is, to my mind, what I have said——

Mr. Covington: I move to strike out this answer as being improper.

The Court: Give him the substance of what was said.

The Witness: Their answer was that it was impossible for any layman to answer that at all——

The Court: Counsel has asked you for the substance of their reply?

The Witness: I am trying to answer it intelligently. Their answer was that it was impossible for any layman to answer that, and also it was impossible for anyone to

gather much sense out of their answer. After pretty much of a lecture,—they were ample on that,—they said that no one could prove that they had any communistic leanings.

Mr. Covington: I did not ask the witness for a speech or [fol. 30] his conclusions. He says——

The Witness: You asked me for a conclusion.

Mr. Covington: I want the substance of what they said. I am not interested in your opinion.

The Witness: I had to draw some conclusion from their answer.

Q. The question is,—what was that in substance?

A. I can't answer it any different.

The Court: Now you have his answer.

Q. What was the next subject or the next thing that was done?

A. I think that the next thing that was done I put the motion as to giving them the privilege of holding their meetings in the city park; and, on the motion, the vote was unanimous.

Q. What you are saying is that they applied for the permit, and they were refused by the Council?

A. I suppose so,—I have no vote in the Council. I am the presiding officer and can only vote in case of a tie. I suppose the reason they were denied was because of matters that were brought out at that meeting. I only suppose [fol. 31] that.

Q. Was a record kept of this meeting?

A. Yes sir.

Q. On the consideration of this application for a permit?

A. Yes sir.

Q. Is there a record of that ruling?

A. Yes sir.

Q. And of the vote?

A. I do not know that it was by a "aye", "aye" vote,—it didn't take that long.

Q. You have testified that the vote was unanimous,—do you think that or know it?

A. I know it.

Q. What was the vote on it?

A. If they were six members of the Council present, six members voted against it,—the Clerk has that record. I can't say that all six members of the Council were present at that meeting, but all the members present voted against

it. If they were only five members of the Council present, [fol. 32] then there five votes against it.

Q. You were there, Mr. Lawder, weren't you?

A. Yes sir, but I haven't any vote.

Q. Was Mr. Kimball there?

A. I don't know.

Q. Was Mr. Barrett there?

A. I don't know, sir.

Q. Who was there?

A. There are six members of the City Council, and I do not know who was present and who was not present.

Q. Was Mr. McLhinney there?

A. I don't know.

Q. Was Mr. Green there?

A. I don't know.

Q. Was Mr. Hollohan there?

A. I think I saw him there.

Q. Will you say how many members of the Council were present at that meeting?

A. We have six members. If six members were present, then there were six negative votes. If only five members were present, then there were only five negative [fol. 33] votes.

Q. How many were there?

A. I don't know,—you have the records here.

Q. The question *is* want you to answer is,—How many members of the Council were present at this meeting?

A. I can't recall. The records are here and you can get all that from the records.

Q. You don't know whether there were one or six members present?

A. We have twenty-six meetings in a year. Ask me who was present on January 15th, and I can't tell you. I can't answer that for any particular meeting.

Q. You have mentioned two who were there because they asked questions?

A. All of them asked questions.

Q. Did Mr. Richter testify?

A. Yes sir, and without having the courtesy to address the presiding officer.

Q. Did Mr. Richter testify?

[fol. 34] A. I have said that he did.

Q. He was there?

A. Yes sir.

Q. Was Mr. Messerman there?
A. I don't recall him.
Q. Mr. Laupert was there?
A. Yes sir.
Q. And Mr. Hopkins was there?
A. Yes sir.
Q. I am going to try to refresh your recollection as to just exactly what took place,—what was called to the attention of the Council,—you have said that a letter was submitted. Isn't this the first thing that was said by Mr. Hopkins to the Council, "A letter of application under date of June the 8th (1949) was presented to the Chairman of the City Park Committee of Havre de Grace, Mr. Hollohan, on June the 9th, concerning use of the public park for Bible lectures, which lectures had been given in many places. Are all members of this committee present? Mr. Kimball, Mr. [fol. 35] Green, Mr. Barrett, Mr. Hollohan?" Do you recall that statement being made at the very outset of this meeting?
A. I do not remember what was the first thing said.
Q. Will you say whether or not that is true,—there is a stenographic report of the meeting?
A. No sir.
Q. And isn't this the next thing that took place,—Mr. Hopkins said, "At that time (June 9th) Mr. Hollohan was presented with a letter of application for our use of the Park and in which was set out the reasons for wanting same". Wasn't that said at that time?
A. I do not recall, sir.
Q. Will you say that it was not made?
A. No sir.
Q. And then Mr. Hopkins said, "We would like to know if Mr. Hollohan has it here",—do you recall that?
A. I recall Mr. Hopkins referring to a letter that he had given to Mr. Hollohan, and Mr. Hollohan made the statement, "I haven't got it here".
[fol. 36] Q. Will you say that he did not say that?
A. No sir.
Q. And then Mr. Laupert, this gentleman here (indicating) said, "We have a copy of the application which was presented to Mr. Hollohan and he was also given copy of a decision which was made by the United States Court pertaining to the use of a park by Jehovah's Witnesses",—do you remember that being said?

A. No sir.

Q. And then he said, "We would like to have this pamphlet returned for our use",—do you recall that?

A. He said there was a letter addressed to Mr. Hollohan.

Q. This letter was addressed to the Council, according to this stenographic report?

A. I am talking about the decision of the Supreme Court,—isn't that what was given to Mr. Hollohan?

Q. Didn't he hand the Council a copy of Supreme Court decisions, and then it was that Mr. Hollohan said, "I know what the gentleman gave me, but I have mislaid it and don't have it here"——

[fol. 37] Mr. McNabb: I object——

Mr. Covington: Withdraw that question.

Q. According to my stenographic report, this is what was said by Mr. Hollohan, "I know that you gentlemen did give it to me but it was mislaid and I have not got it. I received that. All these gentlemen know what the application was about,—for the use of the park last Sunday". Did he talk about that?

A. I don't know.

Q. Will you say that he did not say that?

A. No sir.

Q. Then Mr. Hopkins said to Mr. Hollohan, "Do you say all of these gentlemen are familiar with the contents of the letter?". Will you say that Mr. Hopkins did not say that?

A. No sir.

Q. Then Mr. Hollohan said "No",—will you deny that was said?

A. No sir.

Q. Then Mr. Laupert said, "We have a copy of the letter [fol. 38] here" and Mr. Hopkins said, "May I read it?" and you said, "Please read it",—he handed you a copy of the letter of June 8th.

A. I have testified that he gave that letter to me at my home.

Q. I am talking about at the Council meeting?

A. I guess it was.

Q. I am reading from the record by the stenographer?

A. You read there, "Mayor: Please read it".

Q. Mr. Hopkins was referring to the letter of June 8th, which was delivered to Mr. Hollohan on June 9th?

A. If he says so, I won't say he didn't.

Q. You don't deny it?

A. No sir.

Q. Then Mr. Hollohan said, "The only application I received from you was for last Sunday. When I refused you permission to use the park, that gentleman (pointing to Laupert) said, 'We are going to use the park whether you like it or not'——

A. That's right.

[fol. 39] Q. Then you said to Mr. Laupert, "Did you say that?"?

A. I don't remember.

Q. Will you deny that you said it?

A. Yes sir.

Q. Then Mr. Laupert said, "I said, 'We would use the park' but not 'whether you like it or not'," and you said "I'll be damned if you are going to use it",—Mr. Lawder you were telling the council what Mr. Hollohan had said,—did that take place at the Council meeting?

A. I don't recall that.

Q. Will you say that that did not take place there?

A. I will not.

Q. Then Mr. Hollohan said, "If I said that then I quote you as saying 'Whether you like it or not'. I said 'Is it a challenge or a threat? If so, I take you up on it',—was that said there?

A. I don't remember.

Q. Then Mr. Barrett said, "Was it written?" and Mr. Hollohan said "No",—he was talking about the statement, —and Mr. Barrett said, "Did you receive a copy of appli-[fol. 40] cation just read?" and Mr. Hollohan said, "No, I did not",—was that said at the Council meeting?

A. I don't recall.

Q. Then Mr. Spragg said, "I wonder whether this gentleman (Hopkins) delivered it?",—was that said at the Council meeting?

A. I don't remember.

Q. Then Mr. Hopkins said, "Before God I delivered it personally the same afternoon after talking to Mr. Kimball",—who is Mr. Kimball?

A. Another member of the Council.

Q. Then Mr. Hopkins continued, "On the evening of June 8th, I first went to Mr. Hollohan's home. It was on the

evening of the local High School Graduating Exercises and he and his family were preparing to attend these exercises. He gave me the names of the other members of the Committee and stated that he did not know whether he would have to work the next day or not but would possibly be home in the morning and I could see him then. I called at his home the [fol. 41] next morning and no one answered the door so I later called him on the 'phone. Mr. Hollohan answered the 'phone and stated that he was ready to go to work in Perryville and that, if he did not have to go on duty, he would probably be home in fifteen or twenty minutes. I called at the end of that time and his daughter told me that he was not at home. I finally contacted him at the Elks Hall on Warren and Stokes Streets at about 3:30 P. M., June 9th and delivered the letter of application to him personally. I may state that he opened the envelope but, to the best of my knowledge, did not read it then,—he fumbled it around in his hands". Do you remember that being said at the Council Meeting?

A. I do not remember it.

Q. Will you say that it was not said?

A. No sir.

Q. Then Mr. Laupert said, "The letter was written and entrusted to Mr. Hopkins to deliver personally", and you said, "As I see it, the two Sundays in question are now [fol. 42] past. What do you want?"

A. I probably did say that, but I don't know that I did.

Q. Will you deny that you said that?

A. No sir.

Q. Then Mr. Laupert said, "We want it for the next two Sundays". Mr. Barrett said, "Did you give them any reason for your denial?" Mr. Hollohan said, "The last time I talked to these two gentlemen was on Thursday or Friday night. They followed me out of the Drug Store. My advice was to give up the idea and I told that gentleman, Mr. Hopkins, that it was Flag Day, and that we were going to put benches, etc. in the park. I would not give him any answer due to the fact that there are six gentlemen besides myself on this Council". Was that said at this meeting?

A. If he said that, it was a misstatement, because there are only five members on the Council besides Mr. Hollohan.

Q. You are a member of the Council, aren't you?

[fol. 43] A. I am the presiding officer.

Q. And there are six members of the Council?

A. Yes sir, but that don't make six members besides Mr. Hollohan, and that is what you quote him as saying.

Q. Mr. Laupert then said, "Flag Day was last Sunday, June 12th",—Did he say that?

A. I don't recall.

Q. Will you say that he did not say it?

A. No sir.

Q. And then Mr. Hollohan said, "You are right there",—was that said by Mr. Hollohan?

A. I don't recall, sir.

Q. He was talking to Mr. Laupert, who had said that the last Sunday was Flag Day?

A. I don't recall that, sir.

Q. Then Mr. Kimball said, "He (Hopkins) spoke to me at the store. He said that he had been to see Mr. Barrett. I do not know whether he saw any of the other gentlemen or not. I told him I had seen Mr. Hollohan go by at about [fols. 44-45] 11:00 A. M. that day (June 9th). He said he would go down to the house to see him. I asked 'What are you going to do in the park?' He said, 'It is going to be a Bible study,—we are going to read the Bible and have a study'. I asked whether there would be any music or singing and he said 'No, just a study'. He said (Hopkins), 'I contacted Mr. Barrett and Mr. Barrett was favorable towards it'. I said that I was favorable towards it too if that was so". Is that what Mr. Kimball said?

A. I don't recall.

Q. Do you say that he did not make that statement?

A. No sir.

Q. Then you said, "These gentlemen came to my house on Thursday or Friday night and told me they desired to hold some meetings in the park. I told them that no action could be taken by me but that they should appear before the City Council on Monday night"——

A. I think that I have testified to what you just read. Wasn't my last statement there, "Tell them what I said"?

[fol. 46] Q. You wanted Mr. Laupert or Mr. Hopkins to tell the Council what you said?

A. That's right.

Q. And, in response to that, didn't Mr. Laupert say this, "The Mayor was courteous and gentlemanly throughout"

A. Yes sir.

Q. And he further said, "I will say that, if everyone were as courteous as he, there could be no complaint"——

A. I do not recall him saying exactly that.

Q. Mr. Lauper continued, "The Mayor promised that the matter would be given justice"?

A. Yes sir.

Q. You remember saying that?

A. Yes sir.

Q. Mr. Laupert, continuing, "He said Mr. Hollohan had said he would not issue a permit for any mixed congregation to use the park",—negroes and whites?

A. I said that?

Q. Mr. Laupert is quoting you as saying, "Mr. Hollohan had said he would not issue a permit for any mixed congre-
[fol. 47] gation to use the park"——

A. That was a conversation between Mr. Laupert and Mr. Hollohan?

Q. Yes,—was that said at the Council meeting?

A. I don't remember.

Q. I am quoting from the stenographic record. Mr. Laupert the- continued, "The Mayor told me that it was not yet time for equality of races but that the time would come when it would be so. I said I agreed with him to a certain extent. You will find that Jehovah's Witnesses are not here to cause trouble and to be mandatory but we are asking for our equal rights. Any other course would be contrary to the Constitution". Do you remember that being said?

A. I do not.

Q. Will you deny that he said it?

A. He may have said it.

Q. You advised them not to use the park, didn't you?

A. I did but that was on the Friday previous to this meeting.

[fol. 48] Q. Then Mr. Spragg said, "We had considerable difficulty with this organization some years ago. They started giving away literature and we had to stop it." Was that said at this meeting?

A. I do not recall.

Q. Will you say that it was not said there?

A. No sir.

Q. Then you said, "I asked them whether they were communistic and advocated the otherthrow of our government

and he said 'No'. I also asked if their teachings were against the Catholic Church''—did you ask them that?

A. I probably did.

Q. Then Mr. Laupert said, ''We are not communistic'' and when he started to explain about that, an interrupiion came from Mr. Spragg, ''We had considerable trouble with these people some time ago getting them off the streets with their literature''. Did you hear that statement made by Mr. Spragg?

A. I remember the occasion, but I can't recall him say-
[fol. 49] ing that at the meeting.

Q. Then Mr. McLhinney said that he wanted to ask one question, ''Is there anything in your regulations which prevents you from saluting the flag?''

A. I have already stated that.

Q. Then Mr. Laupert said, ''Yes, in accordance with the teachings of the Bible. The Supreme Court of the United States has ruled that Jehovah's Witnesses are not violating any of the laws of the land by refusing to do this. We respect the flag and what it stands for and have fought in the Courts of this land to uphold the liberties guaranteed by the flag. There are many cases in the files of the country. You know there are about two hundred and fifty-six denominations and about seven or eight hundred faiths, each with their own form of worship''. Did Mr. Laupert say that at this meeting?

A. I don't recall.

Q. Will you say that he did not say it?

A. No sir.

[fol. 50] Q. Then Mr. Spragg said, ''Allow me to correct you, there are eighteen hundred in the world'', did Mr. Spragg say that?

A. I don't remember.

Q. Mr. Laupert said, ''We are speaking of our country. I think all you gentlemen will reason with us'' and then he was interrupted by Mr. Spragg as follows: ''Why can't you conduct your meetings in your church as other denominations do? We do not see others leaving their buildings to go elsewhere''. Do you remember that being said?

A. I do not recall it.

Q. Will you say that it was not said?

A. No sir.

Q. Mr. Laupert, "We know politicians do not confine themselves to one building." Do you speak in one building? I am referring to their campaigns";

A. I don't recall that being said.

Q. Will you say that he did not say it?

A. No sir.

Q. Mr. Spragg: "We do not want a sermon." (To members [fol. 51] of Committee) "What do you recommend?" and Mr. Hollohan said, "I recommend that their application be denied"—

A. A motion was made.

Q. Did it take place the way I read it to you?

A. No sir.

Q. You say it did not?

A. No sir.

Q. Then Mr. McLhinney said, "You say that the Bible condemns the saluting of the flag?" to which Mr. Laupert replied, "Yes, I would like to explain the matter from the Bible" and Mr. Spragg said, "We are not here for a religious sermon, or discussion. I second Mr. Hollohan's motion",—did that take place?

A. No sir.

Q. Then you said, "I think the matter should be answered relative to the question of saluting the flag" and Mr. Laupert said, "The answer is here in the Bible", and some of you said, "We are not here to hear about the Bible"

[fol. 52] A. No sir,—I don't think anyone said that.

Q. You say they did not?

A. They were not disrespectful to the Bible.

Q. Will you say that it was not said?

A. No sir.

Q. Mr. Laupert: "The Bible is what we go by and the Constitution of this country is founded on the Bible. If we deny it, then we deny the Constitution". Did he make that statement?

A. I do not recall it.

Q. Then you said, "I told you that the park belonged to the city and that the Council are the custodians of it". Did you say that?

A. I don't know that I said it but that is a correct statement.

Q. Did you say that?

A. I don't recall saying it.

Q. Do you say that you did not say it?

A. No sir.

Q. Do you remember what Mr. Laupert said before that?

A. I neither confirm nor deny it.

[fol. 53] Q. Then Mr. Laupert said, "I believe that the park belongs to the taxpayers and not to the City", and then you asked this, "Do you, or any of you, pay taxes?", and Mr. Hopkins said, "I have a tax receipt with me". Did you get that answer from him?

A. He said, "I own a piece of property in Havre de Grace".

Q. The point is that I am asking you if those things were said at this meeting?

A. You have a stenographic record and we don't have any. I don't confirm or deny it.

Q. Then you said, "That's right,—you pay taxes for your place down here" and Mr. McLhinney asked this question, "How many citizens of Havre de Grace belong to your group?",—was that question asked?

A. I don't recall.

Q. Will you say that he did not ask it?

A. No sir.

Q. Then Mr. Laupert said, "I would say, roughly, about fifty", Mr. McLhinny asked "Are any of them here? and Mr. Laupert answered "Yes",—did you hear that?

[fol. 54] A. I know that they had several people there.

Q. Will you say that that did not take place?

A. No sir.

Q. Then Mr. Richter said, "I am a citizen and a taxpayer. I should like to read to you gentlemen some excerpts from a similar case which was ruled on by the Supreme Court of the United States. Have I your permission, Mr. Chairman?" to which you answered "Yes", and then Mr. Richter read from a pamphlet dated August 22, 1948. Do you recall that?

A. No sir.

Q. He read a Supreme Court decision in re: the use of parks?

A. He gave me a copy of that.

Q. I am asking you whether this took place at this meeting?

A. I neither confirm nor deny it,—you have the record there.

Q. I am trying to refresh your recollection,—are you satisfied that the stenographer took that down as it occurred [fol. 55] there?

A. I do not deny it or confirm it,—you have the record there.

Q. Then Mr. Spragg said: "That speaks of an arrest and has nothing to do with this. We will not allow the city park to be used by your organization for such religious meetings",—was that said there?

A. I suppose he did say that,—I didn't say it.

Q. You won't say that he did not say it, will you?

A. No sir.

Q. Then Mr. Richter said, "If you will allow me to read, you will see that the case is similar. It speaks of a town like Havre de Grace and in this case too the City Council denied them permission to use the park which belongs to the public and not to the City Council. Would you deny us the use of the Streets?" and Mr. Spragg said, "Will you listen? No, but you create a nuisance",—was that said at this meeting?

A. I don't recall it.

Q. Will you say that it was not said?

[fol. 56] A. No sir.

Q. Mr. Richter said, "I obtained permission from the Chairman to read" and you said "If you gentlemen are not orderly, I shall have to ask you to sit down" and Mr. Richter said, "I am sorry. May I read?" and the Council said that that was not necessary. Mr. Richter again tried to read and Mr. Spragg said, "I move that we second the motion made by Mr. Hollahan",—Mr. Spragg cut him off from reading. Did that take place there?

A. I don't recall it.

Q. Then Mr. Warfel said, "The motion was not put but merely mentioned",—did that take place?

A. Just a ways back you read that Mr. Hollohan recommended that their application be denied.

Q. I am asking you about what Mr. Warfel said, "The motion was not put but merely mentioned",—then Mr. Hollohan said, "I make a motion that the use of the park by Jehovah's Witnesses be denied" and that motion was seconded by Mr. Spragg. Then you said, "Are you gentlemen [fol. 57] ready to take a vote on the matter? Did that take place?

A. That is the usual procedure.

Q. Then Mr. Barret asked this question,—"Is it true that each of Jehovah's Witnesses is an ordained minister and that as such he is exempt from fighting for his country?" and in reply to that Mr. Laupert said, "I can show you from the Bible"—and then some of you said "Leave the Bible out of it and answer briefly" and Mr. Laupert said, "Yes, but Jehovah's Witnesses are preaching the gospel of the Kingdom and anyone who comes to listen to them is not asked to join anything. They are perfectly free to do as they please. We invite them to hear the truth as contained in God's Word, the Bible. We are making a request to use the park for two Sundays for the preaching of this gospel". Then you took a vote on the question, and it was unanimously agreed the use of the park should be denied to Jehovah's Witnesses, each saying "nay" in turn. Is that what took place?

A. I suppose it did.

[fol. 58] Q. Then you said, "The matter is settled. The Councilmen all voted against your use of City Park for your meetings" and then the meeting adjourned. Is that what took place?

A. I suppose it did.

Q. Then, Mr. Mayor, weren't you presented with a letter or a copy of a letter dated June 20th, 1949. I am asking you if you can identify that as a copy of a letter that was presented to you after the Council had voted denying them the exercise of rights that are guaranteed by the constitution?

A. It was this letter and a pamphlet.

Q. What was in the pamphlet?

A. Some Supreme Court decisions.

The Court: Have them marked for identification, and put them in evidence when you put your side of the case on.

Mr. Covington: I will have them marked, your Honor.

Thereupon the said letter and pamphlet were marked for the purposes of identification.

[fol. 59] Q. When that letter was presented to you with a number of Supreme Court decisions saying that you did not have the right to refuse them the use of the park, did you discuss that with the City Attorney?

A. No sir.

Q. What did you do about this letter,—it presented a grave matter to you——

A. I believe that I know the responsibilities of the Mayor of Havre de Grace. When I am directed by an unanimous decision to do a certain thing, I am going to do it. By their vote, the Council directed me not to permit them to have these meetings in the City Park on the following Sundays. They make the regulations and it is my job to enforce them. I testified a bit earlier to what was brought to my attention later in the week.

Q. I will get to that later?

A. I read the letter and I read the decisions of the Supreme Court, and I did my duty as I saw it,—I prohibited them holding a meeting in the City Park the following Sunday.

[fol. 60] Q. They are guaranteed freedom of assembly, freedom of speech——

Mr. McNabb: I object——

The Court: Objection sustained. That is a matter that you can argue to the jury.

Mr. Covington: I will note an exception, your Honor.

The Court: It is not necessary for you to note an exception, Mr. Covington. Under our practice, you get them.

Q. You took an oath to support the constitution?

A. That's right.

Q. You knew that a legal question was presented in that letter, didn't you?

A. Yes, sir.

Q. You did not need the advice of a lawyer on that proposition,—you took——

The Court: That is not a proper question.

Q. Did you see the City Attorney?

A. Yes, sir.

Q. What did you say to him?

[fol. 61] A. I don't know what I said when I talked to him.

Q. Was it before or after this meeting?

A. It was after the meeting.

Q. Was it before this Sunday that they met in the park?

A. I think it was after that.

Q. Following the Sunday meeting?

A. It was after the first or second meeting——

Q. Was it after the first arrest?

A. It was between the first and second arrest.

Q. Who is the City Attorney?
A. My. Dyer.
Q. Where did it take place,—this talk with Mr. Dyer?
A. I think he came to my home.

The Court: Are you asking him about matters that transpired after the Council meeting now?

Mr. Covington: Yes, your Honor,—before these arrests.

The Court: I don't think that that is proper.

[fol. 62] Mr. Covington: I desire to pursue this further. I want to show now that there was a violation of civil liberties.

The Court: Those are questions for the jury.

Mr. Covington: I feel that I should be permitted to question this witness about these matters.

The Court: All this witness can do is to give you an opinion about that. Unless this case is kept within its normal and proper limits, we are going to be a long time trying it.

Mr. Covington: I am not interested in a speech, your Honor. I want the truth of the matter.

The Court: I do not want to abridge your cross-examination, but I do not think that this is proper cross-examination. Those are matters that you can argue to the jury.

Mr. Covington: The purpose of this cross-examination now is to show this jury, which has the responsibility of deciding this case,—that body should have all the facts,—that this man and the other members of the Council agreed [fol. 63] among themselves to deprive these Jehovah's Witnesses of rights that are guaranteed to them by the constitution,—civil rights; and that in itself is a criminal offense,—the prevention of such things and matters, and this jury should know about it. If I am prevented from further pursuing this matter, and will not be considering the truth, which they must have. The jury cannot decide this case until they have all of the evidence.

The Court: I think that that matter is irrelevant, improper and immaterial.

Mr. Covington: That is the ruling of the Court.

The Court: Yes,—it is.

Mr. Covington: Then I will note an exception for the reasons stated.

Q. Now, coming down to this meeting that took place following this meeting of June 20th,—June 27th or 28th,

no, it was June 26th,—did you give any instructions to the Chief of Police?

A. Yes sir.

Q. Where and when did you talk to the Chief of Police?

[fol. 64] A. I usually see the Chief of Police every day, sir.

Q. When did you first talk to the Chief of Police,—was it at the hearing before the Council?

A. When I did talk to him about this question, it was after the meeting of the City Council.

Q. You learned from the letter of June 20th that you did not have the right to deny them the use of the park, which they had planned using on the following Sunday,—when and where did you see the Chief of Police after that?

A. I probably saw the Chief of Police at the meeting.

Q. What took place then?

A. I gave instructions that the meeting must not be held, and I learned later of another reason for not permitting that meeting to be held.

Q. You talked to the Chief of Police at the Council meeting?

A. I said that perhaps I talked to him at the meeting. If I did, I was discussing this particular thing with him, but I am not prepared to say it was that night.

[fol. 65] Q. You say "perhaps",—can't you say for sure?

A. I will not say for sure that I talked about this particular question with him that same night, as I saw him every day or every evening.

Q. When do you first recall talking about this matter with the Chief of Police,—about Jehovah's Witnesses being prevented from using this park in Havre de Grace?

A. After the City Council meeting?

Q. Yes?

A. Within the next two or three days.

Q. What did you tell him?

A. I told him that the meeting was not to be held.

Q. Did you say that to the Chief of Police at the meeting in the hall, or out on the street?

A. No, sir,—as I started to tell you a moment ago, there were some rumors after the meeting in Havre de Grace.

Q. Where were you then talking to the Chief of Police, and what was said?

[fol. 66] A. He asked me what I had to say, and I told him that I had heard rumors a group that was forming in the town——

Q. What town?

A. The City of Havre de Grace. They might have caused a disturbance and could have caused something that we would be sorry about later on. It was my job and duty not to permit any mob violence. Feeling that that might happen, I called the Maryland State Police, and I called the Sheriff's Office. I told them what the feelings were and asked for help,—asking that they send some men the following Sunday to prevent any such thing. I did not want that stigma on my town. Seven or eight of the State Police, two from the Sheriff's Office and four of our own boys were there to see that nothing happened at the meeting. I was not there.

Q. Who told you about this mob violence?

A. There were rumors all over the City of Havre de Grace.

[fol. 67] Q. Who told you about this mob violence?

A. Rumors were all over the City of Havre de Grace. I do not recall what individual brought it to my attention.

Q. Do you believe every rumor you hear?

A. I believed that rumor.

Q. Do you believe every rumor you hear?

A. I believed that rumor.

Q. Who brought the rumor to you?

A. I answered that.

Q. Will you tell us under oath that you do not know?

A. I would not so tell you.

Q. As a matter of fact you do not desire to disclose the name?

A. No sir,—I am not withholding any names—it came from all sources.

Q. Did it come from an authori-tive source,—from a responsible source?

A. I thought so at the time. If I did not, I would not have taken the position that I took.

[fol. 68] Q. Did it come from an authori-tive source,—from a responsible source?

A. I do not recall who it was who came to me in person.

Q. You can't remember that now?

A. That's right.

Q. You remember that you called the State Police?

A. Yes sir.

Q. Why have you forgotten so quickly?

A. So many wild rumors come along that I can't recall who tells me everyone, and then you have to understand the conditions in our City intelligently. We have several organizations there——

Q. What are they?

A. The American Legion——

Q. Did you get any of these rumors from the American Legion?

A. I did not say that. You asked me about organizations.

Q. No,—we talk about rumors now?

A. They came from different places and we-- so many [fol. 69] that I could not ignore them, and I did not ignore them.

Q. You are in a way reluctant to discuss these rumors, aren't you?

A. The best way to answer that is when anyone is in a position of authority and rumors are transmitted to them, and they know the atmosphere and the possibilities of what might happen, then the authorities take precautions before some calamity happens,—you know what might happen. It seems to me that, when these rumors are in the air, you should take action to prevent the happening of something for which you might be sorry later on. There is an old saying that an ounce of prevention is worth a pound of cure.

Q. You did get help from the Sheriff and the State Police?

A. Yes sir.

Q. Were they called there to arrest any mob that formed?

A. No sir. They were to arrest anyone using the city [fol. 70] park following my instructions from the City Council.

Q. You were going to arrest anyone using the City Park?

A. No sir,—I made it clear what we were going to do.

Q. Were arrests made of the people using the park?

Mr. McNabb: I object——

The Court: Objection sustained.

Q. When you talked to the Sheriff and the State Police, did you tell them you were going to arrest these Jehovah's Witnesses if they tried to use the city Park?

A. No sir.

Q. What did you tell them?

A. I left that job up to the police.

Q. Did you tell the Chief of Police that the Jehovah's Witnesses were to be arrested?

A. I told him that I wanted them arrested if they attempted to use the city park after they had been prohibited its use.

[fol. 71] Q. Do you have an ordinance which prohibits the use of the City Park without a permit being obtained?

A. I do not know about an ordinance, but the city charter makes us the custodians of the property owned by the City of Havre de Grace.

Q. Is there a city ordinance that prevents the use of the city park without first obtaining a permit to use it?

A. I do not know about any ordinance, but the city charter makes us the custodians of the property owned by the City of Havre de Grace. Whether or not there is an ordinance, the practice has always been, at least in my time, in the City of Havre de Grace to give a permit for the use of the city park for a religious organization, or a Sunday School picnic,—that permit has always been granted on a request to the Chairman of the Park Committee.

Q. Take a look at a copy of the letter of June 20th, 1949, look at it.

The Court: Is that in question?

Mr. Covington: Withdraw that question.

[fol. 72] Q. Take a look at a copy of the letter of June 20th, 1949, and read that part of the letter that calls upon you, Mr. Mayor, to give information to Jehovah's Witnesses about any ordinance about the use of the city park, "the undersigned request a copy of any regulation governing the local city park and its use"?

A. I take an exception as to whether or not there is an ordinance, and I have answered that question,—the question of the custody of the property of the City of Havre de Grace. The do not have the right,—Jehovah's Witnesses or any group,—to use any city property without a permit from the Mayor and City Council.

Q. Did Jehovah's Witnesses request information from you as to whether or not there was an ordinance?

A. In that letter they have a request.

Q. Take that letter and show me if there is a request in it?

A. Here is the letter "the undersigned request"

Q. Do you have any written regulation or written state-
[fol. 73] ment of policy?

A. We do have an ordinance defining anything that might be called disorderly conduct.

Q. That is covered by the Statutes of Maryland, and we are not talking about disorderly conduct. The question that I asked you is,—do you have any copies of any written law, or any written law, or anything written on the minute books of the Mayor and City Council of Havre de Grace respecting the requiring of a permit from the Mayor and City Council for the use of the City Park?

A. You will have to ask the city lawyer.

Q. Did you talk to the city lawyer about that request for a copy of any ordinance?

A. I do not think I did.

Q. Have you ever attempted to locate any such an ordinance for the City of Havre de Grace?

A. I do not think that that is necessary, as we have the authority under the charter of the City of Havre de Grace without any regulations.

Q. Then you are not relying on an ordinance?

[fol. 74] A. The records of motions are just as sound as ordinances.

Q. Do you have any motions?

A. That was the very question when you were denied the use of the park. We have a record of that and under the City charter——

Q. You have the power to make regulations?

A. Yes sir,—whether it is by motion or by ordinance.

Q. Do you have any written statement in regard to the use of the city park?

A. I don't know.

Q. Will you say that there are none?

A. No sir,—I will not say there are none, but we have the required authority.

Q. Did you attempt to find out what the regulations were?

A. No sir, and that is my answer to that question.

Q. You heard me read the stenographer's record?

A. I do not accept that as being correct.

Q. Do you say that there is anything incorrect about it?

[fol. 75] A. No sir, and I don't say there is anything correct about it.

Q. Do you say that the stenographer did not take down everything that was said?

A. I would not say that, but I do not recognize it as being a duly constituted record.

Q. It is not whether she is a duly recognized stenographer or not,—the question is,—do you say that that record is not correct?

A. I don't say anything about it.

Q. You did not hear any of Jehovah's Witnesses call the flag a rag, did you?

A. No sir,—that was done in a talk outside.

Q. Will you say that they did not?

A. I have an idea that I made a mistake in saying it was at the Council Meeting.

Q. Don't you remember your testimony?

A. If I make that statement, I don't retract it,—that it was made at a regular Council meeting.

Q. Who made that statement?

A. Some of your own group.

[fol. 76] Q. Where?

A. In my home.

Q. Where?

A. In my home.

Q. In the front room of your home?

A. Yes sir.

Q. When was this?

A. Within two or three days at the outside.

Q. Tell us if that was outside the Council building?

A. No sir,—I don't think it was said there.

Q. Who said it?

A. The two men who were at my house.

Q. Who were they?

A. Mr. Lampert and Mr. Hopkins.

Q. Did you pay any attention to who said that?

A. I do not know which one it was,—they both talked.

Q. What participated that?

A. It was as to why Mr. Hollohan had refused them the use of the park. They told me something that had not been told me, and something you have not asked me about yet.

[fol. 77] Q. I am asking you what brought that up?

A. Mr. Hollohan's refusal to allow them to use the city park.

Q. He had refused to allow them to use the city park because they refused to salute the flag?

A. That was one of the reasons.

Q. When I was asking you questions at the first part of your cross-examination, you did not tell me that any mention of the flag was made at your house?

A. Did you ask me anything about it?

Q. Tell me the conversation that led up to that?

A. I just answered that question.

Q. You have not told me what led up to that remark?

A. Mr. Hollohan's refusal to permit them to use the city park, and the reasons he had for his refusal.

Q. What was that,—what reasons did Mr. Hollohan give for doing that?

A. I am telling you,—they handed around literature that villified one of the great churches of the world, and I do not say that that was all.

Q. I am asking you if it was prejudice?

[fol. 78] A. I did not say that. They got courtesy and respect in my home and in the council room, and now you are asking me if it was prejudice.

Q. You don't seem to like the word "prejudice",—was it because they attacked one of the great churches?

A. I said that Mr. Hollohan said that.

Q. Did he say it to you?

A. In my conversation with these gentlemen in my home, —you want to lead up to a certain thing that was asked,— I said that Mr. Hollohan had refused them the right to use the city park because of certain religious or anti-religious literature that they had passed around in the City of Havre de Grace,—that was one of the reasons. And another thing was about saluting the flag.

Q. At your home?

A. At my home.

Q. What was said before that?

A. During the conversation it came out,—something was [fol. 79] said about them not being forced to salute the flag, and something about an old rag.

Q. You are not sure about that, are you?

A. I am sure they did.

Q. Can you tell us specifically what was said?

A. I can't quote them verbatim. I am trying to give you some idea of the story. I said "old rag",—they may not have said those words.

Q. Come out with all of it?

A. They compared the flag to an old rag, and my answer was "the entire history of this country is written in that flag" and they——

Q. I want you to some out with all that was said?

A. I can't say everything that was said there,—that was five or six months ago.

Q. You are not sure they called it "an old rag"?

A. They called it something that was very much a facsimile of it. I haven't said they didn't call it that.

Q. You are sure of that?

A. It was something similar.

[fol. 80] A. I do not recall just what was said.

Q. Specifically where was it said,—if it was not said in the Council meeting, was it said after you moved outside the Council Building?

A. They did not say it after we moved outside the Council room.

Q. Where did you first say it took place?

A. I said it was said on the outside, and my home would be on the outside.

Q. Now we are getting down to your home, and what is your recollection of your testimony——

The Court: The witness has given you his recollection of his testimony, but the witness and you do not agree.

Mr. Covington: I would like to check his testimony against the record, and then examine him further.

The Court: You have a right to check his testimony and then argue to the jury what you find.

Mr. Covington: I would like to excuse this witness now, and recall him for further cross-examination after I have [fol. 81] the stenographer check his testimony.

The Court: You may do that.

Mr. Covington: Remember, Mr. Witness, I am not through with you.

Thereupon ROBERT W. WARFEL, a witness of lawful age, being produced on behalf of the State, first being duly sworn, testified as follows:

The Direct examination.

By Mr. McNabb:

Q. What is your full name?
A. Robert W. Warfel.
Q. Do you have any official position in Havre de Grace?
A. I am the City Clerk.
Q. And you have been for how long?
A. Since 1949,—one year.
Q. By whom are you employed?
A. By the Mayor and City Council of Havre de Grace.
Q. Were you the City Clerk in June of this year?
A. Yes sir.
Q. Do you have your record of meetings with you?
[fol. 82] A. Yes sir.
Q. Do you know when the application was made, if there was an application, by Jehovah's Witnesses to hold a meeting in the city park at Havre de Grace?
A. Yes sir,—June 20th is when the application was made.
Q. Was it filed on June 20th?
A. Yes sir, as far as I know. It came up before the Mayor and City Council on June 20th.
Q. It was at that meeting?
A. Yes sir.
Q. Turn to your record of that meeting and read the minutes in reference to that application?
A. Just that portion,—just this one particular thing.
Q. I do not want any other matters read?
A. "A group headed by Mr. William J. Hopkins, representing a religious body known as Jehovah's Witnesses, appeared before the Council and demanded the use of the City Park on June 26th and July 3rd, from 2.00 to 3.00 [fol. 83] P. M. After much discussion Mr. Hopkins was denied the use of the park. A roll call denied the demand unanimously".
Q. The minute that you have just read pertains to this application?
A. Yes sir.

Q. And no where else in your records is there any record as to that application?

A. No sir,—that is the only one.

Mr. McNabb: That is all.

The Cross-Examination.

By Mr. Covington:

Q. Do you have any written records there, Mr. Warfel, that pertain to, or regulations for, the use of the city park?

A. No sir,—that minute book is the only thing.

Q. Do you have any written regulations about that?

A. Ordinances?

Q. Yes?

A. None that I know of.

Q. Not any?

A. None that I know of, but I won't say there are none.

[fol. 84] Q. As the City Clerk you have the custody of the ordinance books?

A. Yes sir.

Q. If there was any written ordinance with respect to the use of the city park, and who made such matter, you would know about it?

A. Yes sir.

Q. And there is none so far as you know?

A. No sir.

Q. Their policy, as far as you know, is not concerned with an ordinance, but it is a policy that they exercise under the city charter?

A. That is correct.

Q. From what you say and what the Mayor says, there is *such* such ordinance?

Mr. McNabb: I object——

The Court: He has answered that.

Q. You have custody of the ordinance books?

A. Yes, I do.

Q. Will you search the ordinance books and see if there is one?

[fol. 85] A. Yes sir.

Q. Have you searched the ordinance books?

A. Yes sir, I did.

Q. Will you search them again before we close today?

A. I can't do that.

Q. Where are they?

A. In the Council Room at Havre de Grace.

Q. You were requested to supply a copy of this ordinance, if there was any, weren't you?

A. Yes sir,—I had a request for it.

Q. What did you do?

A. I could not get into the Council Room then because it was being redecorated.

Q. When did you refinish decorating that room?

A. About a month ago.

Q. Have you tried to do anything about that request since then?

A. No sir.

Q. Why not?

A. Because I have not had another request for it.

Q. The first request had not been complied with, had it? [fol. 86] A. What request?

Q. You were requested to produce a copy of any ordinance that was on the City books in this letter that was at the Council meeting?

A. They were all locked in then, and I could not get to the book of records.

Q. Since you could get to the records, have you made any effort to comply with that request?

A. No sir, and I can't do it today.

Q. Why?

A. Because the books are in Havre de Grace.

The Court: Both the Mayor and the Clerk have said that, so far as they know, there is no city ordinance governing the use of the city park; and you have a right to proceed on the theory that there is none.

Mr. Covington: Could I have a stipulation to that effect.

Mr. Dyer: I don't think that that is necessary.

Mr. Covington: I am trying to find out if that is true [fol. 87] or not.

The Court: So far as the state is concerned, their witnesses have not proved there is and the Mayor and City Clerk have said that, so far as they know, there is no such ordinance. Therefore, you have a right to assume that there is none.

Mr. Covington: I call upon the counsel for the state to say whether there is one or not.

The Court: You can't force him to answer that.

Mr. Covington: Which one?

The Court: The State's Attorney, in his opening statement to the jury, said that this prosecution was based not on a violation of any city ordinance but a violation of the criminal law of this state; and citizens of Havre de Grace are subject to prosecution for a violation of a general criminal law, whether there is an ordinance, or whether there isn't an ordinance. The prosecuting attorney has said that this is a prosecution for a violation of the general criminal law.

[fol. 88] Mr. Covington: That is where we differ, your Honor. They can argue that the Mayor takes the position that the charter of the City of Havre de Grace gives them the authority to regulate the use of the parks, and gives to them the authority to do certain things, and I think that the defendants should be allowed to pursue their questioning as to any records. The only thing I can do is to issue a summons duces tecum for him to produce instantly the ordinance books of the City of Havre de Grace, and I tender him his fee and traveling expenses so he can do that.

The Court: This is a simple matter. The State has not proved that there is such an ordinance, and the Mayor and City Clerk have said that, to the best of their knowledge, there is no such ordinance, and the Mayor has further said that they did not need one, because the City Charter gave them the custody of the city property. Therefore, you have a right to proceed on the assumption that there is no ordinance in the City of Havre de Grace govern-

[fol. 89] ing the use of the city park.

Mr. Covington: I want the books here so the witness can look through them. We asked for this some months ago, and the Clerk declined to supply the information.

The Court: You have a right to order a summons duces tecum.

Q. You were at this City Council meeting?

A. I guess I was. I took the notes.

Q. Give me the names of the members of the Council, who were present?

A. Do you want me to read them to you?

Q. I am asking you to give me the names of the members who were present at that meeting,—did you give their names?

A. I did not give the names of the members present. All

members of the Council and the Mayor were present. The Mayor was present and Councilmen Kimball, Barrett, Spragg, McLhinney, Green Hollohan were present.

Q. Tell us the names of the Councilmen who voted on [fol. 90] this motion and how they voted?

A. I read them a moment ago,—do you want me to read them again?

Q. Was there any other motion on that question?

A. No sir.

Q. Give us the names of the Councilmen who were present, and those who were absent?

A. None were absent,—all were present.

Q. The Mayor said some were absent?

A. The minutes say they were all there.

Q. Was Mr. Kimball there?

A. Yes sir.

Q. Was Mr. Barrett there?

A. Yes sir.

Q. Was Mr. Spragg there?

A. Yes sir.

Q. Was Mr. McLhinney there?

A. Yes sir.

Q. Was Mr. Green there?

A. Yes sir.

Q. Was Mr. Hollohan there?

[fol. 91] Q. I am going to read to you from the stenographic report many of the things that I have asked you about, and I am going to ask you if that is a reasonably fair and true and correct report of the proceedings at that meeting?

Mr. McNabb: I object——

The Court: Objection sustained.

Mr. Covington: I will note an exception, your Honor. That will be all from this witness then.

Testimony of Witness Concluded.

Thereupon WALTER T. WALKER, a witness of lawful age, being produced on behalf of the State, first being duly sworn, testified as follows:

The direct examination.

By Mr. McNabb:

Q. What is your full name?
A. Walter T. Walker.
Q. You live in Havre de Grace?
A. Yes sir.
Q. What is your official position there?
[fol. 92] A. I am Chief of Police of Havre de Grace.
Q. How long have you been Chief of Police?
A. About seven years.
Q. And you were Chief of Police in June and July of this year?
A. Yes sir.
Q. Do you know the defendants in this case,—Kelly and Niemotko?
A. Yes sir.
Q. They are charged with disorderly conduct in Havre de Grace,—Niemotko on June 26th and Kelley on July 3rd. Tell his Honor and the Gentlemen of the Jury what you know about that?
A. There was supposed to be a meeting in the city park at Havre de Grace and my orders were not to let this meeting go on.
Q. From whom did you get your orders?
A. From the Mayor. On June 26th, I went to the city park,—June 26th was on Sunday——
Q. About what time did you arrive at the park?
A. I arrived there about twenty minutes to two, and [fol. 93] about ten minutes to two Mr. Laupert and Mr. Niemotko came into the city park, walked over to where I was and spoke to me.
Q. Mr. Niemotko was there then?
A. Yes sir. They spoke to me and talked to me in regards to the meeting, and I told them that my orders were not to let the meeting go; and that, if they did try to hold a meeting, I would have to make an arrest. They said they wanted to have the meeting,—that they were going to start the meeting, and Mr. Laupert, Mr. Niemotko and several

others started gathering under the trees in the west end of the park.

Q. What did Mr. Niemotko say to you at the time he came to where you were?

A. He said that they were going to carry on regardless, after I told them they were not to hold the meeting. Then they went and started the meeting and I placed Mr. Niemotko under arrest. Then I gave him to Officer Himes and told him to take care of Mr. Niemotko, and I stayed at the park for quite some time after that.

[fol. 94] Q. Were any other arrests made at that time in connection with this meeting?

A. No sir.

Q. Now, go on to the next Sunday,—what happened on that occasion?

A. On that occasion——

Q. That was July 3rd?

A. Yes sir. Practically the same thing happened. Mr. Laupert, Mr. Kelley, and I believe Mr. Hopkins, came to the city park. I went over and said the same thing to those men in regard to this matter. I stated to Mr. Kelley that he had been at the meeting the Sunday before and knew what had happened, and that I hoped it would not happen again,—that the same thing would not take place. They went and started a meeting, and I went over and placed Mr. Kelley under arrest on a charge of disorderly conduct.

Q. On June 26th, was the meeting in progress before you made the arrest?

A. It had hardly started.

[fol. 95] Q. What actions on the part of Mr. Niemotko called for you to do what you did,—what did he do that caused you to realize or believe that he had started a meeting?

A. He had a gathering there, had a book out and had started to talk, and that was after I told him what I would have to do if he started a meeting,—that I would have to place him under arrest.

Q. How many persons were present on this first occasion?

A. In all of the gathering?

Q. Everyone who was assembled there?

A. I would assume that there were between one hundred and twenty-five and one hundred and fifty in the Park at that time.

Q. In the park there were between one hundred and twenty-five and one hundred and fifty persons?

A. Yes sir.

Q. How many were gathered close around Mr. Niemotko and were paying attention to what was going on there?

[fol. 96] A. I would assume in the neighborhood of fifty,—between fifty and seventy-five.

Q. And the other persons making up the one hundred and twenty-five to one hundred and fifty were in different parts of the park?

A. They had gathered around in the park

Q. And the ones centered about this meeting were how many?

A. Between fifty and seventy-five.

Q. What were the other people doing?

A. They had been down in the park,—quite a few were sitting around the park as they do in the summer time.

Q. They had no connection with this meeting that you know of?

A. Not that I know of.

Q. On the following Sunday,—July 3rd,—approximately how many people were around in the proximity of the place where this meeting took place, as you say?

A. Quite a few,—more than had been there the Sunday before. A number from the City had come to the park at [fol. 97] that time.

Q. Were there over a hundred persons there?

A. Yes sir,—I would say in the neighborhood of one hundred and seventy-five,—approximately one hundred and seventy-five to two hundred were gathered around,—some people who came down from the town before there ever was a meeting.

Q. In either of these cases were the arrests made before they disobeyed your instructions as Chief of Police?

A. No sir.

Q. In each instance they had actually started a meeting after they had been told they could not have a meeting there in the park on that particular day?

A. That is correct, sir.

Q. Do you know whether or not either of these defendants knew that you were the Chief of Police for Havre de Grace?

A. I think they both did.

Q. What leads you to that belief?

A. I stated that when they came there.

[fol. 98] Q. You were dressed so they could tell you were an officer?

A. Yes sir,—I was in uniform.

Q. The park that has been referred to here as the "city park" is in Havre de Grace, Harford County, Maryland?

A. Yes sir.

Mr. McNabb: That is all.

The cross-examination.

By Mr. Covington:

Q. You are the gentleman who signed the complaint in each of these cases?

A. Yes sir.

Q. Before the committing magistrate under oath?

A. Yes sir.

Q. You sworn that these men were guilty of a violation of Article 27, Section 131, which prohibits——

A. I had the warrants issued for disorderly conduct.

Q. You signed and swore to that complaint?

A. I did not sign it.

Q. Who did sign it?

A. The magistrate.

[fol. 99] Q. You did not take any other or sign any complaint or information?

A. No sir.

Q. You told the magistrate that you made the accusations?

A. Yes sir.

Q. Did you tell the magistrate that these gentlemen were guilty of disorderly conduct under the Maryland Statute?

A. No sir,—I asked him for a warrant for disorderly conduct.

Q. You had to give some information before you got the warrant, didn't you?

A. Yes sir, but I did not tell him they were guilty.

Q. What did you tell him?

A. I told him that I would like to have a warrant for disorderly conduct for Mr. Niemotko and Mr. Kelley.

Q. Did you give him any of the facts?

A. I told him about the meeting at the park and how they had disobeyed orders.

Q. Orders of whom?

[fol. 100] A. Of me,—not to start the meeting.

Q. Have you read section 131 of Article 27 of the Code,—are you familiar with the law on disorderly conduct, drunk and disorderly?

Mr. McNabb: I object——

The Court: Let him answer it.

A. Did I ever read it?

Q. Yes?

A. No sir.

Q. Have you ever had it read to you?

A. No sir,—only what I heard Mr. McNabb say this morning.

Q. How did you know they were guilty of disorderly conduct if you never read, or had read to you, the section of the Code dealing with disorderly conduct,—how could you know if they were guilty of a violation of it or not?

A. I was informed, sir.

Q. Who informed you?

A. A lawyer.

Q. What lawyer?

[fol. 101] A. Mr. Cobourn.

Q. Where and where did Mr. Cobourn inform you?

A. I asked him before anything was done about the charge of disorderly conduct and I was told that, if the meeting was started after they were warned, that I should ask for a warrant for disorderly conduct.

Q. When and where was this information given to you?

A. If I am not mistaken, I think that it was in his office on front street.

Q. With respect to the meetings?

A. Just before the first meeting. I am pretty sure, but not positive, that it was the Saturday prior to the meeting,—when Mr. Laupert, Mr. Hopkins and a group were putting out circulars about the first meeting.

Q. You say that Mr. Laupert and Associates of the Jehovah's Witnesses were putting out written or printed invitations on the streets of Havre de Grace?

A. Yes sir.

[fol. 102] Q. You knew then that they proposed going forward with the meeting as planned?

A. Yes sir.

Q. Then you went to Lawyer Cobourn and laid the facts before him?

A. Yes sir.

Q. And he told you that it would be disorderly conduct if they went ahead with the meeting contrary to orders not to hold it?

A. Yes sir.

Q. When did you talk to the Mayor about what was to be done?

A. On Saturday.

Q. What Saturday?

A. The Saturday they were placing the handbills on the streets.

Q. Didn't you talk to him after this meeting?

A. The Mayor told me, after the meeting, that he did not want to let this thing — out of hand,—that he wanted it stopped.

Q. What did he say?

[fol. 103] A. He said not to let the meeting go on in the park,—if they started a meeting, to make an arrest.

Q. When was this and where was it?

A. If I am not mistaken, it was the Tuesday night after the meeting, and it was at the police box on front street.

Q. Did he tell you what charge to make?

A. No sir.

Q. Now, Mr. Walker, were these men acting in an offensive and annoying way while they were talking to or addressing this meeting?

A. No sir,—they were not loud.

Q. Did they use loud, odious or profane language?

A. No sir.

Q. Did you hear what they were trying to tell their audiences?

A. The only thing I can remember is, "We are opening our meeting". I think there was a script but I won't be positive about it,—understand Mr. Kelley said that.

Q. You arrested Mr. Kelley before he even got started, [fol. 104] didn't you?

A. He had practically gotten started.

Q. You arrested Mr. Kelley before he even got started, didn't you?

A. Yes sir.

Q. He did not give any idea,—he hardly let his audience know what he was prepared to talk about, when you stopped him?

A. He had just gotten started to talk.

Q. What about Mr. Niemotko——

A. Mr. Niemotko had gotten a little further along in his meeting. I had to walk across the circle to get where he was, and I heard Mr. Niemotko talking. I had to circle around to get where he was, and he was talking when I got there.

Q. On the occasions of Mr. Niemotko or Mr. Kelley,—did either one of them say anything that was annoying or offensive.

A. I did not hear them say anything like that.

Q. On either occasion did either one of them talk in a loud and boisterous tone, or act in a disorderly manner?

[fol. 105] A. No sir.

Q. Were they speaking about anything that was unlawful, or asking the people to violate the law of the land?

A. I did not hear anything of that kind.

Q. Did the- insist on anyone violating any law?

A. No sir.

Q. Did they invite the people to rise up in arms against the City of Havre de Grace?

A. I did not hear them say anything like that.

Q. They were only trying to preach about the bible and love, weren't they?

A. They didn't get that far,—they didn't say much of anything or tell anyone anything much, at all.

Q. Now, Mr. Walker, you took an oath of office when you became Chief of Police?

A. Yes sir.

Q. You say that you believed in the constitution?

A. Yes sir.

Q. You know that a man has a constitutional right to [fol. 106] preach in a public park, don't you?

Mr. McNabb: I object——

The Court: Objection sustained. That is an argument that you can save for the jury.

Q. Tell these twelve good and lawful men sitting in that box why it was that you arrested these men.

Mr. McNabb: I object——

The Court: Objection sustained. He has stated clearly and explicitly that he was acting on orders from the Mayor of Havre de Grace that such a meeting could not be allowed to be held in the city park, and to arrest anyone participating in such a meeting, and the arrests followed that order.

Q. Was that the only reason that you arrested them?
A. They were my orders.
Q. Was that the only reason that you arrested them?
A. That was my reason.
Q. And your only reason?
A. Yes sir.

Mr. Covington: That is all I want to ask this witness.

Testimony of witness concluded.

[fol. 107] Thereupon WILLIAM A. BULLOCK, a witness of lawful age, being produced on behalf of the State, first being duly sworn, testified as follows:

The Direct examination.

By Mr. McNabb:

Q. What is your full name?
A. William A. Bullock.
Q. You are one of the town officers of Havre de Grace?
A. Yes sir.
Q. How long have you been on the City police force?
A. Ten years.
Q. Were you on duty as a police officer in Havre de Grace on June 26th last, and July 3rd last?
A. No sir,—on June 26th only.
Q. But you were a member of the City police force on July 3rd, 1949?
A. Yes sir, but I was off duty that day.
Q. On June 26th,—do you know Daniel Niemotko?
A. I only met him on that date,—Sunday, June 26th.
Q. You know who he is?
[fol. 108] A. Yes sir.
Q. Did you see him in the Havre de Grace city park on the afternoon of June 26th last?

A. Yes sir.

Q. You saw Mr. Niemotko there?

A. Yes sir.

Q. Tell his Honor and the Gentlemen of the Jury what you observed and heard in connection with this charge?

A. On June 26th about twenty minutes to two, Chief Walker and myself proceeded to the city park. On our arrival there, we found quite a crowd gathered,—people from the city and around the city, and these men referred to——

Mr. Covington: And these men you have referred to are Mr. Laupert and Mr. Niemotko?

The Witness: Yes sir.

Mr. Covington: And this gentleman here in the brown suit is Mr. Niemotko?

The Witness: That's correct.

Q. Go ahead?

[fol. 109] A. When they came there, Chief Walker told them that they did not have permission from the Mayor and City Council to hold this meeting, that they could not go against these orders; and, if they did, they would be placed under arrest and the meeting would be stopped. These gentlemen said they were going to conduct the meeting anyway. Promptly at two o'clock he started preaching under the trees, and was immediately placed under arrest. Officer Himes brought the car, and they were taken to jail and held until he furnished bail, and then he was released.

Q. You were not there on July 3rd?

A. No sir.

Q. Did you receive any instructions from the Mayor and City Council at this meeting?

A. No sir. I received my instructions from the Chief of Police.

Q. You took your orders from Chief Walker?

A. Yes sir.

Q. And he gets his orders from the Mayor?

[fol. 110] A. That is correct.

Mr. McNabb: That is all.

The cross-examination.

By Mr. Covington.

Q. Did you see anything disorderly, or hear anything disorderly said by this man Niemotko when he was preaching?

A. No sir.

Q. Did he use any loud or boisterous language?

A. No sir.

Q. Did he insist that the people listening do anything in violation of the law, or against you, or against the City of Havre de Grace?

A. No sir.

Q. In effect he acted quite as a gentleman and as a preacher?

A. Yes sir.

Q. He was just trying to preach to this congregation?

A. I did not hear any of the conversation, as I was in the police car.

Q. And, if there had been anything disorderly there or anything offensive there in the crowd, you would have [fol. 111] noticed it?

A. No sir.

Mr. McNabb: What you heard him say was that he was going on with the meeting regardless?

The Witness: Yes sir.

Mr. Covington: That is all.

Testimony of Witness concluded.

Thereupon JAMES R. HIMES, a witness of lawful age, being produced on behalf of the State, first being duly sworn, testified as follows:

The direct examination.

By Mr. McNabb:

Q. What is your full name?

A. James R. Himes.

Q. You are a member of the police force of Havre de Grace?

A. Yes sir.

Q. You assist Chief Walker there?

A. Yes sir.

Q. How long have you been an officer in Havre de Grace?

A. Around twenty years.

Q. Were you on duty as an officer on June 26th last?

[fol. 112] A. Yes sir.

Q. And on July 3rd too?

A. Yes sir.

Q. Do you know by sight the defendants in these cases,—Daniel Niemotko and Neil W. Kelley?

A. Yes sir.

Q. Did you see either of these men on either of these occasions in the city park at Havre de Grace?

A. Yes sir.

Q. Tell his Honor and the Gentlemen of the Jury what you heard and observed there on either of these occasions?

A. I was instructed by the Chief of Police to be ready to go down to the city park, and I went to the city park around twenty minutes to two. I waited around there a few minutes, as we all did, and three men walked up to Chief Walker, and two or three others ganged up around there. Chief Walker spoke of various things, and they spoke back. What they were talking about concerned this meeting, and Chief Walker told them he was under orders not to allow any [fol. 113] meeting, and they were forbid to have any meeting and they were told that, if they did, they would be placed under arrest. As they started to walk away, they said they were going through with the meeting just the same, and they walked away from us and went over to the west side of the park and started their meeting. As they did, Chief Walker walked around and placed this man (Niemotko) under arrest.

Q. What was the act,—you said you understood he had started a meeting?

A. He had his book in his hand, had it open and was quoting something,—they had just started their meeting.

Q. He had just started to talk, in other words?

A. Yes sir.

Q. That was on June 26th, 1949?

A. Yes sir.

Q. After he started talking, what did Chief Walker do?

A. He placed him under arrest and put him in my custody, [fol. 114] and I took care of him,—Officer Bullock and I took

him in the car to the City Courtroom, told him what his rights were and told him that there was a telephone there if he wanted to use it, and we told him what his bond was going to be.

Q. Who went with you?

A. Officer Bullock.

Q. And I presume that he posted bond shortly after that?

A. Yes sir.

Q. Now, on July 3rd, what happened?

A. The same thing. We went to the city park, met a group there and then went through the same procedure. They were told that, if they started a meeting, it would be the same thing as last week,—that they would be placed under arrest. So they walked away from us and started their meeting again.

Q. And that resulted in the arrest of Mr. Kelley?

A. Yes sir.

Q. The meeting had started before Mr. Kelley was placed under arrest?

A. Yes sir.

[fol. 115] Q. Was he taken to the police station?

A. Yes sir,—by Chief Walker and myself.

Q. Do you know how many people gathered together on each of these occasions,—either the ones around who were participating in and listening to the meeting, and others?

A. In the whole park there were about one hundred and fifty people.

Q. On each occasion?

A. There were really more on the second occasion.

Mr. McNabb: That is all.

The Cross-examination.

By Mr. Covington:

Q. Officer was either or or both of these men arrested because they were speaking or holding a meeting,—which was it, or were they arrested because they were talking in the park, or because there were a lot of people there,—which was it?

The Court: All that this witness has said is that he received the men after they had been arrested by Chief Walker. He actually could not know why Chief Walker

[fol. 116] arrested them,—I do not think that that is a proper question.

Mr. Covington: We will note an exception, your Honor.

Q. You were present when the Chief took them into custody?

A. I did not make the arrests.

Q. You were present when the Chief took them into custody?

A. I was present.

Q. And you were standing right by the Chief?

A. No sir.

Q. But you were near him?

A. Yes sir.

Q. You were present and know why he was arrested, don't you?

A. The Chief of Police placed him under arrest.

Q. You were present and know why he was arrested, don't you?

A. No sir,—I could not tell you.

Q. Did you hear either one of these men do anything disorderly?

[fol. 117] A. No sir.

Q. Did you hear them say anything that was out of the way?

A. No sir.

Q. Did they speak in a loud and boisterous manner when they were talking to their audiences?

A. No sir.

Q. Did they use any language, when they were talking, to incite the audience against the police or anyone else in the City of Havre de Grace?

A. No sir,—not in my opinion they didn't.

Mr. Covington: That is all.

Testimony of witness concluded.

Thereupon EDWIN E. DWYER, a witness of lawful age, being produced on behalf of the State, first being duly sworn, testified as follows:

The Direct examination.

By Mr. McNabb:

Q. What is your full name?
A. Edwin E. Dwyer.
Q. Where do you live?
[fol. 118] Q. Havre de Grace, Maryland.
Q. What is your occupation?
A. I am Associate Editor of the Havre de Grace Record.
Q. Were you at the city park in Havre de Grace on the afternoon of June 26th last?
A. I was.
Q. That was June 26th, 1949?
A. Yes sir.
Q. Did you see either of these defendants there?
A. I saw Mr. Niemotko there that Sunday, and I saw Mr. Kelley there the following Sunday.
Q. You were also there on July 3rd and saw Mr. Kelley there?
A. Yes sir.
Q. Tell his Honor and the Gentlemen of the Jury what you saw and heard in reference to this affair on June 26th?
A. I was there on June 26th purely from a news standpoint; and, when I got there, any number of police were [fol. 119] there,—State, City and County. The officers seemed to be standing around in one group waiting for something to start or something to happen. I talked to them for a few minutes and learned of the action to be taken. While we were talking, Mr. Niemotko came up in company with Mr. Laupert and another gentlemen. If I remember correctly, they walked over to Chief of Police Walker, and I think that Mr. Niemotko introduced himself, and said something,—I suppose you know why we are here. After that Chief Walker told him, "I have been told that you are not to hold this meeting in the city park; and, if you do, it is my duty to arrest you" or words to that effect. Mr. Walker said, "If you do proceed with your meeting, I will have to arrest you", and Mr. Niemotko told him that they intended to carry on regardless. They walked over,—they had come to about the center of the park first,—to the west

end of the park; and, at that time, I would say there were probably fifty or sixty of Jehovah's Witnesses in that area, [fol. 120] —some were sitting on the ground and some were standing around. As Mr. Niemotko walked up, they congregated about him. Finally he opend his bible and began to talk. Chief Walker and the other officers were standing about the center of the park, and they immediately began to walk over to him, and Chief Walker said, "I am sorry but I will have to place you under arrest" or words to that effect. Chief Walker also said, "If you remember, I warned you when you first came to the park of the consequences if you started a meeting". Mr. Niemotko submitted very meekly, and Chief Walker took him over and turned him over to Officer Himes. I did not go to the car. On the following Sunday they were going to have another meeting and I was there. Mr. Kelley approached Chief Walker and they went through the same procedure that Mr. Niemotko had with Chief Walker. Chief Walker warned Mr. Kelley not to start any meeting, and Mr. Kelley said that he was going on regardless of the consequences,—he said he was going to begin the second meeting,—it was just about [fol. 121] the same speech that Mr. Niemotko made. Shortly after the meeting got started, Chief Walker told Mr. Kelley what the consequences were, and placed him under arrest. They took him to the Court Room and Magistrate Dyer was there at the time.

Q. He posted bail?

A. Yes sir,—he gave bail at that time. Following the arrest, I went down there with them.

Q. I don't think that you know anything more about the case from the time that he gave bail?

A. Yes sir,—that was all that day.

Mr, McNabb: That is all.

The Cross-examination.

By Mr. Covington:

Q. Were you at the Council Meeting?

A. No sir.

Q. You are a newspaper man and were not at the Council meeting?

A. No sir.

Q. You knew about it, didn't you?

A. Yes sir.

[fol. 122] Q. Did you get close enough to hear what these men talked about on either occasion?

A. At the city park?

Q. Yes?

A. I believe on the second Sunday Mr. Kelley did not get very far.

Q. As a matter of fact, he about got out his first sentence, and Chief Walker was there?

A. Yes sir.

Q. What about the Sunday that Mr. Niemotko was there?

A. For a while, as I stated, I stood in the background until the arrest was made of Mr. Niemotko. He did not take him away immediately and he complained to him about what happened,—he was being arrested because of the fact that he had violated some local code. I did not know what he meant.

Q. Did you hear anything disorderly said by either one of them?

A. Nothing at all.

Q. Isn't it a fact that they were quite gentlemanly and academic?

[fol. 123] A. They were.

Q. Did they use any loud or profane language towards anyone?

A. No sir.

Q. Did they use any language in the park there to incite anyone to violence against the police or the City of Havre de Grace?

A. No sir.

Q. Did *them*, themselves, act in any unseemly manner?

A. No sir.

Q. As a matter of fact, isn't the only reason they were taken into custody was because they were holding a meeting in the park without a permit?

A. I can't answer that as I do not know.

Q. You wrote this article in the Havre de Grace Record under date of July 1st, 1949, didn't you?

A. May I see that?

Q. And also the news report on the first page of the issue of July 1st, 1949?

A. Yes sir,—I see these two items.

Q. Can you identify them?

[fol. 124] A. Yes sir.

Q. Did you write these articles?

A. Yes sir.

Q. And you have this column, "Havre de Grace Week by Week. Eddie Dwyer"?

A. Yes sir.

Q. This is an account of the incidents that you have just related to the jury?

A. This meeting called——

Q. This is the heading, isn't it,—"Meeting Called on Account of Cops"?

A. This definitely is, and this is news. You referred to another article.

Q. Did you write these articles contain-g certain reports on what took place at the park,—these are certain facts or news items of what took place *of what took place* that appear in this article,—you recognize them, and in your opinion you disregard these facts——

A. I would say that they are true to the best of my knowledge.

[fol. 125] Q. What about this one,—I am referring to the first page of the Havre de Grace Record, the issue of July 1st, 1949,—is that a true and actual report of what took place at the park?

A. To the best of my kpowledge, it is,—I witnessed it.

Mr. Covington: This is a news item that appeared in the Havre de Grace Record under date of July 1st, 1949, and it is on the first page and it is headed, "Meeting called on account of cops". That is all from this witness.

Testimony of Witness Concluded.

Thereupon CORPORAL JOHN DAUGHERTY, a witness of lawful age, being produced on behalf of the State, first being duly sworn, testified as follows:

The Direct Examination.

By Mr. McNabb:

Q. You are a member of the Maryland State Police?

A. Yes sir.

Q. And you are stationed where?

A. I am stationed at Elkton now.

Q. How long have you been a member of the State Police?
[fol. 126] A. I have finished twelve years' service.

Q. Corporal Daugherty were you at the Havre de Grace City Park on Sunday, June 26th last?

A. I was not in the park proper,—I was on the road in a car.

Q. Could you observe things that were going on in the park?

A. Yes sir.

Q. Could you hear any of the conversation from that point?

A. No sir,—not every word.

Q. Tell the Gentlemen of the Jury what you saw from the point where you were?

A. Three or four gentlemen came over and talked to Chief Walker. After talking to him for a few minutes, they left him.

Q. Do you recognize either of these defendants as being one of those men?

A. This man here was one of them,—the man with the green tie (Niemotko). The reason that I remember him was that this gentleman was later escorted out of the park [fol. 127] by Chief Walker.

Q. What did you see?

A. I saw him and a couple of fellows talking to the Chief of Police, and later he went to a group that was gathered under the trees and started to talk, and then I saw the Chief go around the group and come out with this defendant.

Q. Did you go to the court room?

A. No sir,—I remained there on the road.

Q. That is all about June 26th last?

A. Yes sir.

Q. What about July 3rd last?

A. I was not in the park proper.

Q. What did you see or hear?

A. I was within a few feet of the Chief of Police, when Mr. Kelley,—the gentleman in question here,—came up.

Q. That was Neil W. Kelley, the defendant in one of these cases?

A. Yes sir. Mr. Walker told him not to start the meeting, or the same thing would happen to him that happened [fol. 128] the last Sunday, and he said that they were going to have the meeting anyway. With that, I backed away from the gathering, but there seemed to be some more con-

versation. Then Mr. Kelley went to the other group and they started to gather around him. He started to talk,—opening what appeared to be a bible; and, when he started to talk, Chief Walker went over and placed him under arrest.

Q. That is practically all that happened at the park that Sunday?

A. Yes sir. He took Mr. Kelley away with him, and I remained at the park until the people left.

Mr. McNabb: That is all.

The Cross-Examination.

By Mr. Covington:

Q. Did you hear either Mr. Niemotko or Mr. Kelley use any profane, indecent or disorderly language?

A. I do not know what disorderly language is,—I do know what profane and indecent language is.

Q. Did they act in any way disorderly,—to disturb the people who were listening to them?

A. I do not know how to answer that.

[fol. 129] Q. Were they all disorderly?

A. The meaning of that term——

Q. What does that term mean?

A. It means excited people,—disorderly, loud and boisterous people.

Q. Use that term,—did you hear either of these men do anything disorderly?

A. The first defendant I did not hear talk at all,—the second one had only started to talk when he was placed under arrest, and as to the language of the first one——

Q. That was the first one in your presence,—would you have heard it, if he did?

A. No sir,—I was quite a distance away.

Q. Was the audience disorderly?

A. They were talking among themselves.

Q. After the arrest was made?

A. Yes sir,—very loudly.

Q. Were they talking before the arrest?

A. Yes sir.

Q. Weren't they listening to the speaker?

[fol. 130] A. He had not started to talk.

Q. When he did start to talk?

A. They quit.

Q. They were not talking at the time that he was speaking?

A. That's right.

Q. What were you doing there?

A. I was ordered there by my lieutenant.

QQ. What for?

A. To assist the Chief of Police of Havre de Grace.

Q. To do what?

A. Preserve peace in the park.

Q. You mean that you came down to Havre de Grace to arrest these two men?

A. I was not there for their arrest.

Q. Then what were you there for?

A. To assist the Chief of Police of Havre de Grace to preserve peace.

Q. How were you to preserve the peace?

A. If the people around him started anything, we were to back up the local police,—if the people started anything, [fol. 131] we were to break it up.

Q. Did you get any instructions about preserving the constitutional rights of either one of these men?

A. I do not understand you, sir.

Q. You know what I mean,—their right to talk in the park——

Mr. McNabb: I object.

The Court: Objection sustained. You can reserve that for argument to the jury.

Q. Did you get any instructions about the rights of these men to use the park?

A. I did not have any instructions,—I was to assist the Chief of Police to preserve peace.

Q. Did your superior officer ask you or tell you to stop this meeting?

A. No sir.

Q. You do know it was stopped?

A. I listened to the talk between Chief Walker and Mr. Kelley,—I don't know about the first time.

Q. When did you see Mr. Niemotko?

[fol. 132] A. After he had been arrested.

Q. You knew, before you went there the second time, what had happened the first time?

A. Yes sir.

Q. And you knew that, when you went there the second time, it was to help stop this meeting, didn't you?

Mr. McNabb: I object.

The Court: He has stated what his knowledge of the matter is,—do not argue with the witness.

Mr. Covington: That is all then.

Testimony of Witness Concluded.

Thereupon WALTER E. KULLEY, a witness of lawful age, being produced on behalf of the State, first being duly sworn, testified as follows:

The Direct Examination.

By Mr. McNabb:

Q. What is your full name?

A. Walter E. Kulley.

Q. You are a member of the Maryland State Police?

A. Yes sir.

Q. Stationed where?

[fol. 133] A. In Havre de Grace.

Q. How long have you been a member of the State Police?

A. Six years.

Q. Were you in Havre de Grace and in or near the city park on the afternoon of June 26th last?

A. Yes sir.

Q. Did you see the defendant Niemotko there that day?

A. I did.

Q. Will you tell his Honor and the Gentlemen of the Jury what you saw and heard there?

A. I was standing in the park talking with the Chief of Police, two town officers and some other officers, when a group of two or three men approached, and Mr. Niemotko was one of them. I believe he said, as I remember it, "Who is in charge?"; and, at that time, Chief Walker said that he was. Then Mr. Niemotko introduced himself to the Chief and told him that he was going to hold a meeting in the park. Chief Walker told him that he had orders not to let any meeting start in the park,—to stop it as they did [fol. 134] not have a permit from the Mayor and City Council,—I believe those were the words. Then Mr. Niemotko

said that, regardless of that, they were going to start the meeting; and then they left and went to a group of people in the west end of the park. After that, I was never close enough to hear what was said. I do know that, a few minutes later, Chief Walker went to the group, accompanied by Officer Himes; and, when they came back, they had Mr. Niemotko with them. He was put in the police car and taken away, and I remained there.

Q. Were you there on July 3rd last?

A. I was there but I did not hear any of the instructions on July 3rd. I was not near the group but in another part of the park. I know that there was a group there and the meeting was stopped, and at that time the officer brought Mr. Kelley away with him. I did not hear any of the instructions that day.

Q. The arrested proceeded just as it has been before testified to in this case?

A. Yes sir.

[fol. 135] Mr. McNabb. That is all.

The cross-examination.

By Mr. Covington:

Q. What were you doing there?

A. That is my territory and I probably would have been there anyhow. However, I had instructions from my lieutenant to be there.

Q. What were your orders?

A. To assist the Chief of Police of Havre de Grace to curb any disturbance that might start there.

Q. You did not see any disturbance there, did you?

A. No sir,—I did not.

Q. You did not see either of these defendants act in a disorderly manner, did you?

A. No sir.

Q. As far as you heard from their lips, there was no loud, disorderly, indecent and profane language?

A. I heard none,—from them or the others in the group.

Q. What about when they were talking to the Chief of Police?

A. They had a very orderly talk with the Chief of Police, [fol. 136] other than they told him that they were going to disobey his orders.

Q. They were taken into custody because they talked to an audience without a permit?

A. I can't answer that.

Q. Isn't that what the Chief of Police told them?

A. No sir.

Q. You were there to help the Chief of Police?

A. Yes sir.

Q. To preserve order?

A. Yes sir.

Q. Would you consider preserving the peace the arrest of these two speakers?

Mr. McNabb: I object——

The Court: Objection sustained. You know better than that, Mr. Covington.

Mr. Covington: That is all then.

Testimony of Witness concluded.

Mr. McNabb: The State rests, your Honor.

Thereupon WALTER T. WALKER, a witness of lawful age, who had been previous-- sworn in this case, was recalled on [fol. 137] behalf of the Defendants.

The direct examination.

By Mr. Covington:

Q. Did you arrest these two men for speaking without a permit, or for holding a meeting without a permit?

A. I arrested them on orders from the Mayor that there was to be no meeting.

Q. Because they were talking in the park?

A. Because they did not have permission.

Q. Were they arrested because they assembled there, or because they were talking there?

A. They were arrested because they started the meeting.

Q. Did they bring a crowd there?

A. A number of people were there.

Mr. Covington: That is all.

Mr. McNabb: No questions.

Testimony of Witness concluded.

[fol. 138] Thereupon ADAM F. LAUPERT, a witness of lawful age, being produced on behalf of the Defendants, first being duly sworn, testified as follows:

The direct examination.

By Mr. Covington:

Q. Will you please state your full name, residence and occupation?

A. Adam F. Laupert, fifty-two years of age, I live in Havre de Grace and been living there for the past two years. I am an ordained minister of the Gospel of God's Kingdom.

Q. In connection with what organization?

A. The Watchtower Bible and Tract Society.

Q. You are also one of Jehovah's Witnesses?

A. Yes sir.

Q. What is the relationship between the Jehovah's Witnesses, and the Watchtower Bible and Tract Society?

A. The Watchtower Bible and Tract Society is a non-profit corporation organized in the State of Pennsylvania and in New York City.

The Court: It is entirely satisfactory for you to make any [fol. 139] reasonable defense you wish in this case, but this is a simple misdemeanor,—the charge is disorderly conduct; and I do not think it entirely proper or necessary for your defense to go into any defense like this. To put up a defense that this is a religious group or organization and to discuss it along that line is highly improper.

Mr. Covington: I am not going into that very far,—I am only trying to identify the organizations involved in this case.

The Court: I have no objection to that.

The Witness (Continuing): The Watchtower Tract and Bible Society is an organization used for the purpose of preaching the Gospel of God's Kingdom, and the Witnesses believe that there is one Supreme Him,—the God Jehovah.

Q. Where they are in a neighborhood, they are associated with the Watchtower Tract and Bible Society necessarily—

A. That's right.

Q. And in Havre de Grace there is a group of Jehovah's [fol. 140] Witnesses?

A. Yes sir.

Q. Where do they meet?

A. At No. 319 Alliance Street.

Q. How many people are associated with that group in Havre de Grace?

A. Roughly in Havre de Grace,—that means the surrounding vicinity in Harford County, too,—I judge in the neighborhood of between fifty and sixty.

Q. And in Harford County you are assigned to this congregation, and this congregation is associated with the Watchtower Bible and Tract Society?

A. That's right.

Q. This congregation,—that may be a misnomer,—carries on evangelical work in Havre de Grace?

A. Yes sir.

Q. Briefly how is this work carried on by the Jehovah's Witnesses?

A. There are various avenues that Jehovah's Witnesses use in accordance with the laws of our country. There use publications which illustrate the bible truths, and they are [fol. 141] carried from house to house, according to the occasion, following the example of Christ Jesus, who went from place to place.

The Court: As this is only a prosecution for a misdemeanor, I am not going to permit you to extend it into a discussion about religions and groups, and the tendency of religious groups. I want to be fair with you but I would like to get this case finished.

Mr. Covington: I have this man as a witness to show the jury what they were during, and I want to give the jury the full picture of them, and still try to keep within the bounds of the issues in this case. As a matter of law, I am bound to show that this is a congregation, and that the- have certain modes or methods of teaching and preaching.

Q. Do you employ missions as part of your teaching work?

A. Yes sir.

Q. Where do you ordinarily hold these missions?

A. We hold them in the homes of the people, in the King- [fol. 142] dom of God Hall, in public places such as public parks——

Q. What time in the year do the Jehovah's Witnesses do this congregational work in Harford County by the use of public parks?

A. Particularly when the weather is very humid, because you are more at home or more at ease in the public places then.

Q. You mean in the spring or summer time?

A. Yes sir.

Q. Then the people will be more comfortable than at a private meeting place?

A. Yes sir.

Q. And you draw audiences such as might come to church services?

A. Yes sir.

Q. When did you plan these meetings of the Havre de Grace Congregation,—meetings in the public park at Havre de Grace?

A. Somewhere in April, we received notice that parks would be good places to hold public meetings, and we [fol. 143] began to make our plans to carry on such meetings in the City of Havre de Grace.

Q. Tell us what steps were taken, briefly,—you proceeded as minister of that congregation?

A. Yes sir.

Q. Did you have the authority of that congregation to act?

A. Yes sir.

Q. That congregation is a missionary and evangelical association that wanted to preach there?

A. Yes sir.

Q. Go ahead?

A. Jehovah's Witnesses of course do missionary work in going from house to house.

Q. This congregation is composed of people of all types?

A. Yes sir.

Q. And, in addition to going from house to house, you have meetings where the public generally is invited?

A. Yes sir.

Q. You made plans to hold a series of public meetings? [fol. 144] A. Yes sir.

Q. What did you do?

A. Part of the making of plans is to have speakers for the various talks, and four talks were scheduled. I made arrangements with the Watchtower Bible and Tract Society to give us speakers to preach the gospel; but, due to vacation coming on, they only furnished two speakers,—

then vacation came on, so then I arranged with Baltimore to furnish us a speaker.

Q. You had four meetings planned?

A. Yes sir.

Q. What did you do with regard to the Officials of the City of Havre de Grace in regard to holding this series of meetings?

A. The first thing we all do, according to instructions, is to look and see if we must make an application, and I went about to find out who to get in contact with in respect to obtaining the use of the park.

Q. You inquired about how to get the use of the city park?

[fol. 145] A. Yes sir.

Q. When you found out that one was needed, what did you do?

A. I first made out the application, and Mr. Hopkins was instructed to take the application to Mr. Hollohan.

Q. I show you this letter and ask you if you had anything to do with the preparation of that letter?

A. Yes sir,—I did.

Q. Did you have help, or did you prepare the letter yourself?

A. Brother Hopkins,—Mr. Hopkins and I both consulted in forming this letter which was to go to Mr. Hollohan.

Q. Did he type it?

A. Yes sir.

Q. And you helped dictate it?

A. Yes sir.

Q. This was done under your supervision and direction as presiding minister?

A. Yes sir.

[fol. 146] Q. When that letter was prepared, what was done with it?

A. I instructed Mr. Hopkins to deliver that letter to Mr. Hollohan personally.

Q. Did you go along?

A. Yes sir.

Q. Did you find out what happened when Mr. Hopkins went to see Mr. Hollohan?

A. Yes sir,—I found out that things were very satisfactory.

Q. You heard something about what was said when the letter was handed to Mr. Hollohan?

A. Yes sir,—he said that he would let us know.

Q. Mr. Hopkins said, when he came back, that Mr. Hollohan would let you know?

A. Yes sir.

Q. What took place?

A. Mr. Hollohan left us under the impression——

Q. Let Mr. Hopkins tell us what he said, as you did not talk with him?

A. That's right,—I was informed by Mr. Hopkins that he understood that we would get the use of the park. He [fol. 147] was also informed that an organization was going to use it for flag services,—the Elks Order, I believe.

Q. You are telling us about the things that you were told by Mr. Hopkins?

A. Yes sir.

Q. Tell us what you did?

A. On Saturday morning we started to advertise.

Q. When was this?

A. This was Saturday, June 11th. We started to advertise about this public talk.

Q. How?

A. By handbills.

Q. Printed invitations?

A. Yes sir. We had not been distributing these invitations very long, when the Chief of Police consulted with Mr. Hopkins about carrying on this meeting.

Q. Were you present?

A. I came in the presence of the conversation a little later on.

Q. Tell us what you heard,—not what took place before [fol. 148] — took a hand in the conversation,—who was the first person you talked to about the letter?

A. Mr. Hollohan.

Q. When and where was that?

A. It was in the City Park.

Q. When was it?

A. It was on Saturday afternoon, June 11th.

Q. Tell us about that?

A. That was after we were informed that we could not use the park on account *on account* of the singing, the organ and benches being set up there. Then I went over and talked to Mr. Hollohan.

Q. Who was with you?

A. It was Mr. Hopkins and myself. Mr. Hollohan told

us of the circumstances of its use, the noise that would be there, and he didn't believe that we would be justified in being there. In that conversation, he said that he would not permit any mixed groups to use the park. We tried to consult with him, we told him about the different groups that we had in our country, that white and colored mixed [fol. 149] in the park, and that everyone was given an invitation. We told him that, if they wanted to assemble there, it was up to them, as they would not be forced. We gave him references to the decisions of the Courts on the use of parks and sound equipment, and then he informed us, or rather he left us under the impression that we could use the park the next Sunday, and he said that he would let us know about it, as far as I remember, around June 15th or 16th. When June 15th or 16th came and there was no word from Mr. Hollohan, Mr. Hopkins and myself began looking for Mr. Hollohan but we could not find him. I went into Mr. Green's drugstore to talk to him,—he is one of the councilmen,—and Mr. Green was glad to talk to us. While we were there, Mr. Hollohan came into the drug store; and, from appearance, he seemed to recognize us, and he tried to get away from us. I ran through the drugstore and approached Mr. Hollohan as he was about to get into his automobile. I asked him about the use of the park, and he said that I would have to see the City Council, as there [fol. 150] was nothing that he could do about it. I then informed Mr. Hollohan that we had the constitutional right to use the park, and that we were going to use it. Then he said, "I'll be damned if you are. I will see that you do not get into the park". Immediately after that Mr. Hopkins and myself had a conversation with the Mayor, which he has related.

Q. This conversation took place at the home of the Mayor?

A. Yes sir.

Q. When was that?

A. It was on Friday night, June 16th, as near as I can remember.

Q. What took place on that occasion,—what did you say, what did the Mayor say and what did Mr. Hopkins say?

A. Mr. Hopkins and myself went to talk with the Mayor, and we had quite a lengthy conversation with the Mayor. I approached him particularly about Mr. Hollohan's attitude towards us.

Q. You could do this better if you would give us, not the exact words, but the substance of the conversation between [fol. 151] you and the Mayor,—what you said, what Mr. Hopkins said and what the Mayor said?

A. We told Mr. Lawder about how Mr. Hollohan had treated us when we made a respectful request for the use of the park, and we told him that we had informed Mr. Hollohan that we could use the park and that we were going to use it. The Mayor advised us not to go into the park, but to present our case before the City Council.

Q. Already one Sunday had slipped by?

A. Not that particular Sunday that we sought, but we left it lay, and took our information to the Council meeting.

Q. The first Sunday was when they were putting in the equipment there?

A. Yes sir.

Q. Then he did not answer your request?

A. That's right.

Q. And the second Sunday went by following your visit to the Mayor?

A. Yes sir.

[fol. 152] Q. Why was that?

A. Because we took the advice of the Mayor,—not to enter into the park, but to bring the matter before the City Council.

Q. Coming back to the conversation that took place at the Mayor's home when you talked to him concerning the attitude of Mr. Hollohan about the use of the park——

A. I stated that the Mayor advised us to bring the case up before the City Council and not to try to go into the park,—that is as near as I can remember as to how it started off. Then there were questions pertaining to the group,—whites and colored mixed together.

Q. Is that what the Mayor said at his home that Friday night?

A. He said that people did not like colored and whites mixed together, and I tried to explain to him that we did not have any jurisdiction over the people, and that we did not try to cause people to have racial distinctions and racial [fol. 153] hatreds. I told — all the people were invited, and that the colored people had as much right to learn the truth as the white people or any other people. He said that he did not believe that the time had yet arrived for

white and colored to mix, and I told him that I agreed with him to a certain extent, but I never explained to him to what extent,—the extent that I agreed with him. Then, as near as I can remember, he brought up government,—whether we insisted upon a different form of government, or that we did not agree with the form of government we had. I told him that we agreed to the principles of our government, and that we upheld the law until that law conflicted with God's law. This is where I stopped and he was taken by surprise. He scratched his head and then he said that he did not believe that any form of government conflicted with the law of God. As we went on in our conversation, he brought up about the flag,—really not so much about the flag as whether we had any literature about [fol. 154] churches. So I told him that we were only teaching the truth and all of the truth, which we upheld. I told him that, if it hit me, I took it. If it hit some one else, they took it or not as they liked. I told him that, so far as the church was concerned, it was not a political organization,—that we kept our hands clean of that.

Q. Let's have the rest of the conversation?

A. Then we went on to talk about other things that do not matter in this case.

Q. What was it you were talking about, and then let the judge decide whether it means anything or matters or not?

A. For instance we were speaking about the Council Meeting and he said that he would see that we got justice there. All through the conversation, he seemed kind and considerate, and we trusted that the Mayor would see that we got the proper consideration. When we left the Mayor, we left him with a mind to co-operate with him. I think that it is a little——

Q. Upon the occasion of your visit to the home of the [fol. 155] Mayor on that Friday night; was there anything in that conversation about any refusal to salute the flag?

A. Not exactly——

Q. If there was anything, what was it?

A. The conversation about the flag, as near as I remember it, was not at his home.

Q. Are you sure there was not?

A. No sir.

Q. Then it was "no",—that was your answer?

A. Yes sir.

Q. Did you make the statement, or did Mr. Hopkins make it, in regard to the flag, either directly or indirectly, that you regard it is as rag?

A. No sir.

Q. Was any statement of that sort made?

A. No sir.

Q. The flag was not discussed at his house that Friday night?

A. Not that I can remember,—nothing whatever.

Q. When was the next time that you had any dealings with him officially?

[fol. 156] A. That was in the Council Meeting.

Q. Tell us about that?

A. In the Council Meeting, I was introduced by Mr. Hopkins, and of course I explained our position,—what we wanted,—what we were making a request for. I was asked in reference to the application for the park, and we proceeded on. In my part of it, as we went through the meeting, I was questioned as to the application. I told them about two Supreme Court decisions there and——

Q. Did you have a stenographer taking down the proceedings in respect to this hearing about this application?

A. Yes, sir.

Q. Who was that stenographer?

A. Miss Daisy Clark.

Q. She is a shorthand stenographer?

A. Yes, sir.

Q. Did you ask her to transcribe her notes?

A. Yes, sir.

Q. Tell us anything else that took place,—from your [fol. 157] recollection?

A. We were denied the use of the park,—we were not permitted our freedom according to our laws and the constitution, which says that we have the right to use the park, and we proceeded to use the park. I advised that there would be a public meeting on Saturday, July 25th, in the afternoon. After we had been at our work a lot of time,—using the sidewalks to advertise the public meetings,—we gave out lots and lots of invitations, my wife and I left the City of Havre de Grace and went out on Route Forty, which was about three-quarters of a mile from the business section of Havre de Grace; and Officer Himes followed me out there to the traffic light and asked me whether we were putting out these invitations, and I

said, "Yes" and he said, "What do you intend to do?" and I says, "We are going to carry this out" and he said, "According to my instructions, you are not, and there is going to be trouble if you do" and then I said, "Then the only thing I know to do is to make a case out of it". So we proceeded on, the arrests were made and [fol. 158] we went into Court.

Q. Now, when was the first time that you had any discussion with the Officials of the City of Havre de Grace in reference to the saluting of the flag?

A. That was in the Council Room.

Q. Tell us about that?

A. It is hard to keep all of these points in mind. The question was asked,—if we would salute the flag and I did not evade the question. I wanted to prove the reason why we did not salute the flag from the word of God, which is the bible, but I was stopped.

Q. You were denied a full hearing on that question?

A. Yes sir.

Q. Tell us what you intended to tell them?

Mr. McNabb: I object——

The Court: Objection sustained.

Mr. Covington: I think that this witness has a right to say what they prevented him from saying at that time.

The Court: I do not think that that is material in this [fol. 159] case. You may make an offer of proof for the record, if you desire to do so.

Mr. Covington: The Defendants offer to prove that the City Council of the City of Havre de Grace denied the defendants a full and fair hearing in respect to the matter that has been remarked before the jury to the prejudice of the defendants, which recognizes the reasons why they refuse to salute the American Flag; and, if they were allowed to testify, the defendants would say that, while it is true they refuse to salute the American Flag, it is not because of any disrespect that they have for the Flag or the country; that they have the highest respect for the flag which is shown by their obedience to the principles for which the flag stands; that the reason they refuse to salute the flag is found in Exodus, 20 Ch., 3, 4 and 5 verses,—you find from the bible that you are not supposed to bow down to any graven images in the heavens above, in the sea or the waters under the sea, and Jehovah's wit-

nesses interpret this salute as bowing down to an image, [fol. 160] and that is the reason they do not salute the flag. They claim that, if they saluted the flag, they would be ascribing salvation to the flag, when it comes from Jehovah alone,—Almighty God. This refusal is based upon a conscientious objection, and not any defiance of the law or any rules, or arbitrary conclusions, but comes from the bible. It does not affect the rights of other citizens, and Jehovah's Witnesses do not teach other people not to salute the flag; but, on the contrary, they let every man decide for himself; and this refusal is a right guaranteed by the constitution, the first and fourteenth amendments thereto; and the Supreme Court of the United States has specifically held that Jehovah's Witnesses have a right to refuse to salute the flag.

Thereupon the Court Reporter read the offer of proof to the Court and the State's Attorney.

Mr. McNabb: I object to the offer.

The Court: Objection sustained.

Mr. Covington: I will note an exception, your Honor.

[fol. 161] Mr. Covington: I have no further questions for this witness.

The Cross-examination.

By Mr. McNabb:

Q. Who did you understand had the authority to issue permits to hold these meetings?

A. I understood that the Chairman of the Park Committee had authority to give us permission to use the park.

Q. And that was Mr. Hollohan?

A. Yes sir.

Q. Then you were advised later that the matter would have to go before the Mayor and City Council?

A. Yes sir.

Q. And, following that advice, you appeared before the Mayor and City Council?

A. Yes sir.

Q. And the matter was presented to and voted on by that body?

A. Yes sir.

Q. And the City Council voted unanimously to deny you the right to hold those meetings in the city park?

[fol. 162] A. Yes sir.

Q. At the time the request was made?

A. Yes sir.

Q. And, over those objections, you held the meetings on these two occasions,—June 26th and July 3rd?

A. Yes sir.

Mr. McNabb: That is all.

The Re-direct examination.

By Mr. Covington.

Q. You made the arrangements and requested Mr. Niemotko and Mr. Kelley to come to Havre de Grace to speak before audiences in the park on both of these occasions?

A. That's right.

Q. They were there by your invitation?

A. Exactly so.

Q. And the audiences were there as a result of the distribution of printed invitations on the streets of Havre de Grace?

A. Yes sir.

Mr. Covington: No more questions.

The Recross-examination.

By Mr. McNabb:

[fol. 163] Q. And they were put out after the rumor that you would not be allowed to have the meeting?

A. The first invitation was put out under the allusion that we were going to have the permit,—otherwise I should say that we actually had permission from Mr. Holloban until we started putting out the handbills, so quite a while afterwards the Chief of Police advised that he was notified we were not going to use the park on account of flag day services.

Q. And, on the second occasion,—July 3rd,—these folders were passed out after you had knowledge that you were not going to be permitted to use the park,—that no permit would be issued to you?

A. That is correct.

Mr. McNabb: That is all.

Testimony of witness concluded.

Thereupon WILLIAM J. HOPKINS, a witness of lawful age, being produced on behalf of the defendants, first being duly sworn, testified as follows:

The direct examination.

By Mr. Covington:

Q. Please give us your full name, address, age and [fol. 164] occupation?

A. William J. Hopkins, I am thirty-years of age, live at No. 319 Alliance Street, Havre de Grace, Maryland and I am a minister of the Gospel of God's Kingdom. My secular occupation is an employee of an insurance company.

Q. How?

A. As its agent.

Q. Are you associated with the Havre de Grace congregation of Jehovah's Witnesses?

A. Yes sir.

Q. Do you have any office in that congregation—assistant preacher, minister or what?

A. I am an assistant to Mr. Laupert.

Q. You have heard his testimony about Havre de Grace and Harford County within a short area of the town, missionary work that is being done in the county; and his testimony about preparations that were made in regard to the holdings of these meetings in the park in Havre de Grace?

A. Yes sir.

[fol. 165] Q. Your testimony would be the same along that line?

A. Yes sir,—generally speaking.

Q. Now, coming down to the letter of June 8th, 1949, which you helped prepare,—did you make any attempt to see or have any contact with any of the City Officials with respect to using the city park before that letter was prepared?

A. No sir,—I did not personally. Mr. Laupert had had contact with the Chairman of the Park Committee.

Q. He had already gone to see him?

A. Yes sir,—I was so advised.

Q. As a result of conference with the man in charge of the park,—Mr. Hollohan,—that letter was prepared?

A. Yes sir.

Q. Who prepared this letter of June 8th, 1949?

A. Mr. Laupert and I worked closely together on that letter. I, myself, doing the typing, and the letter was dated June 8th, 1949.

Q. After that letter was typed, what was done with it?

A. On June 8th,—that evening,—I went to Mr. Hollohan's home at No. 712 S. Union Avenue, Havre de Grace; [fol. 166] endeavored to present him with this letter of application; but it so happened that, when I arrived there, he and his family were going to the local highschool graduation exercises,—I understood that his daughter graduated that evening. I did not get to discuss the matter with him very much, but he advised me to see the other members of the Park Committee. He told me that he would probably be at home in the morning, if he did not have to report for work, but that it was not possible for me to see him at this time.

Q. What took place next?

A. I waited until the next morning,—somewhere around nine o'clock, and I went to Mr. Hollohan's home.

Q. Were you alone or with some one?

A. I went there alone. I rang the bell but did not receive any response. Then I went to a drugstore and put in a telephone call, and Mr. Hollohan answered immediately, and he advised me that he was on the verge of going to Perryville right across the Susquehanna River which [fol. 167] is between the two cities to report for work. He said that he would not know until he got there whether he was being sent out,—understand, Mr. Hollohan is a railroad man. He said that, if he did not have to go to work, he would be back home in fifteen or twenty minutes. I waited approximately that length of time and put in another telephone call to his home. His daughter answered the telephone and said that her father was not there, and she did not seem to know much about his whereabouts at the time. Due to the fact that we had hopes of holding this series of lectures, which were beneficial to the public, not much time remained, as it had gone from nine to twelve o'clock while I was trying to reach Mr. Hollohan, I thought that I would see the other members of the Park Committee,—there were three of them besides Mr. Hollohan and he had given their names. I went to see Mr. Barret, who is the editor of the Havre de Grace Record. I told him that we had hopes of using the local park there in connection with a series of bible lectures. He received

[fol. 168] me well, and we discussed the point relative to getting——

Q. Tell us what your conversation with him was,—the substance of it and not word for word?

A. One of the points that I did bring out was that I had this letter in a sealed envelope addressed to Mr. Holohan, Chairman of the Park Committee. It was sealed and, therefore, Mr. Barrett did not see it. When I talked to the other members of the Committee, I showed it to them and told them about what was in it, because apparently it was going to be some time before I saw Mr. Hollohan and delivered it. I told Mr. Barrett the contents of the paper generally. He advised me to talk to the other members of the Park Committee, and the next one I saw was Dr. Green, and then I saw Mr. Kimball down on Washington Street. Mr. Barrett desired that the matter be taken up, and he thought that perhaps this would facilitate the matter. Due to the short time remaining up to June 12th, —this was June 9th,—I went to see Mr. Green at his drugstore, and he was in.

Q. Then what happened?

[fol. 169] A. I brought up the same matters generally and in addition to that, I showed them this letter of application and the envelope in which it was sealed, and said I might have some difficulty in contacting Mr. Hollohan. I think that Mr. Green mentioned the Elks' Home; and, if we were going to use the park that Sunday, I would have to deliver that letter of application; and later that evening, about five or six o'clock, I did deliver it. Our meeting was scheduled to begin at 2.00 P. M. and I thought that the local radio station would be on hand to give part of it. I was advised to speak to Mr. Barrett and I intended to go down to see Mr. Kimball, and I did see him a little further down the street.

Q. Go ahead?

A. I found Mr. Kimball there and in that conjunction we discussed the matter. I advised him likewise that I had been to see Mr. Barret and Mr. Green, and I showed him this envelope containing the letter of application. In each case I advised each of the gentlemen that, if Mr. [fol. 170] Hollohan was going to be out — town, which seemed likely, I wanted to deliver this letter to him personally just as soon as I could. They all seemed desirous of helping and asked several questions,—was there going to be any music, any signing, the reason for the meeting,

how long it lasted. I told them that they usually lasted about an hour,—that we would start*ed* in the neighborhood of two o'clock, and would be through between three and half past three. I believe I advised these gentlemen that the meeting would be open to the general public. He stated at the time,—I am referring to Mr. Kimball as I had seen Mr. Barrett before,—"I was impressed" and he was too. I said that Mr. Hollohan seemed to be absent and might be leaving town. Mr. Kimball told me that, about 11.00 o'clock that morning (June 9th) he had seen him go by in his automobile. I endeavored to contact him at his home,—I went immediately to his home and talked to his daughter and his wife, and they told me to try the park. I went there and talked to Mr. Cloak.

[fol. 171] Q. Finally did you get to see Mr. Hollohan?

A. Finally that same afternoon.

Q. Did you see any other members of the council that afternoon?

A. No sir,—I said to each of these gentlemen at one time that we were coming to the Council Meeting.

Q. You did see Mr. Hollohan.

A. Acting upon the advice of Mr. Cloak, I tried the Elks' Home in Havre de Grace. About three or half past three I went to the side entrance and asked the man in charge if Mr. Hollohan was in there. In a few minutes Mr. Hollohan came out and he seemed upset about my being there. He said that he did not want to discuss city matters in the Elks Hall. I tried, at the outset there, to see if I could make arrangements to go to his home and take it up there, if that was what he desired. At that we were not making much headway, he said that he expected to go out on the railroad in about an hour and would be gone a day or two,—that he would be back Friday or sometime Saturday. Any-

[fol. 172] way, I presented him with the written application.

Q. What did he say when you presented it to him?

A. There was little, very little, said in regards the letter.

Q. Did he decide the matter then and there?

A. He did not read the letter, and I had explained to him the best I could in the confusion there what it contained. He advised me that I should see Mr. Green, as the Elks were planning on holding their annual Flag Day Exercises on this Sunday, June 12th. He said that they would have sound equipment there, and possibly we could use that sound equipment. My main point was that we desired to

begin around two o'clock and our meeting would be over by three or half past three; and that the main meeting would be at five o'clock. The Elks usually have a parade preceding their Flag Day Services. I assured him that there would be no conflict between the two organizations.

Q. What did he say about your application for four consecutive Sundays submitted by that letter?

[fol. 173] A. He was not too definite about that,—I believe he said he wanted to discuss the matter with the other members of the committee.

Q. Then did you try to locate him after that,—did you go with Mr. Laupert to see Mr. Hollohan in respect to the use of the park before the following Sunday?

A. Yes sir,—I saw him Saturday afternoon about eleven o'clock.

Q. You mean Saturday morning do you not?

A. Saturday afternoon I saw Mr. Hollohan in the park. Prior to that we had been confronted by Chief Walker when we began to advertise this meeting. He talked to us around eleven o'clock or noon.

Q. Did you see Chief Walker there then?

A. Yes sir,—he was in that neighborhood.

Q. After you finished handing out leaflets, you went to see Mr. Hollohan that afternoon?

A. No- exactly. We were acting upon his advice when I had seen him on Thursday afternoon. He had said that we might be able to use the sound equipment,—that had to do with the time that the Elks were beginning their cere-

[fol. 174] monies, and when they were going to have their parade. I began to have the handbills printed——

Q. This date was given as June 13th?

A. No sir,—June 12th. Several of the local congregation had been doing effective work, and I was at the office where I am employed. They had been engaged in this work some little time,—from fifteen minutes to a half hour, when Chief Walker called on me, and I went with him back to near the local police booth there. He said that Mr. Hollohan had been there and had said that this would disrupt the arrangements for the Elks' ceremonies that Sunday afternoon. He said that, instead of being there later in the afternoon, we would have to be there by noon, which was before our scheduled starting time. He said that they were going to have an electric organ there and that that would disrupt our meeting.

The Court: Isn't this what actually happened? Mr. Hollohan refused the permit, they were advised to go to the Mayor and City Council, and they also refused them a permit.

[fol. 175] Mr. Covington: I can state that that is a fact, except I want to show why the meeting was not held on June 12th. I want to show that the Jehovah's Witnesses complied with the request and did not hold a meeting on June 12th; and we are going to offer, when we get to it, this letter they had during this following week, and how they located Mr. Hollohan.

The Court: The permit was refused at that time, and later it was refused by the Mayor and City Council,—that statement is already in the record and can't you accept that instead of and in lieu of the same statement by this witness?

Mr. Covington: We can stipulate these *these* facts are true, so they will be in the testimony by this witness.

The Court: We are not interested in anything beyond the refusal of this permit.

Q. When you saw Mr. Hollohan in reference to the use of the park on June 19th,—when were you to hold the second meeting, which you did not hold?

A. On June 19th.

[fol. 176] The Court: Mr. Covington, I do not want to abridge your right as far as the testimony is concerned; but, in my view of this case, nothing of that kind is relevant. The whole issue here and all the testimony is that the permit was refused; and, after they were refused, these defendants proceeded to hold these meetings against the instructions of the Chief of Police, and they were arrested. It is a matter of law and that is the question before the jury.

Q. You were at the meeting before the Council?

A. Yes sir.

Q. And you heard the Mayor's testimony about your going to his house on the Friday night of this meeting on June 20th?

A. Yes sir,—it was Thursday or Friday night.

Q. You are secretary of the congregation?

A. Yes sir.

Q. Didn't you keep a record, as one of the assistants of Mr. Laupert, of what took place in your dealings with the City in respect to this matter?

[fol. 177] A. Yes sir.

Q. Using those records to refresh your memory, what went on the Friday before the Council meeting?

A. I think that it was June 16th,—this preceded the Monday night of June 20th.

Q. The Mayor said that you talked to him in his living-room?

A. Yes sir,—after we talked to Mr. Hollohan the same evening.

Q. It was then that you went to the Mayor's house?

A. Yes sir.

Q. What took place at the Mayor's house?

A. After we talked to Mr. Hollohan in front of the drug-store, he advised us to go down and see the Mayor, and also that they had decided to bring the matter before the Mayor and City Council at the meeting on June 20th. We were advised by Mr. Hollohan to go and see the Mayor, which we did. Mr. Laupert covered that very well, and I believe that the Mayor acknowledged that Mr. Hollohan had been there.

[fol. 178] Q. What took place at the Mayor's house?

A. The Mayor received us very well, and Mr. Laupert was the principal spokesman at that time. We talked with him about the matter,—what we had done with Mr. Hollohan in an effort to secure the use of the park for this series of public bible talks, what the result had been thus far, and now we had come to him more or less on the advice of Mr. Hollohan. One of the things that we talked over, as best I can recall, was the matter of mixed congregations. Mr. Hollohan had told us previously that he would not issue a permit for a mixed congregation, and even Chief Walker thought that *that* white and colored people should not be allowed to assemble together there. Also there were the flag day ceremonies there that day, and that our attendance was only a small group of people. Mr. Laupert said that he agreed with Mr. Lawder about the equality of the races. Then we were asked if we were going communistic and believed in the overthrow of the government. I believe the two of us answered that to quite an extent there.

[fol. 179] Q. What was said about that?

A. Like Mr. Laupert, I brought out our endeavors to obey the laws of the land where we happened to live; and, when they got to the point where they conflicted with the laws of God, then we went according to our conscience like all other Christians. That seemed to take the Mayor somewhat back at the time. Then he asked us about our teaching and if we were particular against the Catholic Church, and Mr. Laupert endeavored to advise him that we were not against any particular church, but endeavored to show the truths of the bible. The Mayor advised us not to hold the meeting on June 19th, but to bring the matter before the City Council on June 20th. We agreed to do so, and he said at that time that Mr. Hollohan's reasons were personal when he refused us the use of the park, and that he would see that justice was done there.

Q. On the occasion of that meeting at his home, was anything discussed in reference to saluting the flag,—he got angry when I asked him if that question did not come up at the Council Meeting?

[fol. 180] A. It stands out in my mind more and more that something like that came up at the Council Meeting.

Q. And not at the meeting at the Mayor's home?

A. The main items and questions discussed were mixed congregations, our meetings, and if we were communistic and advocated the overthrow of the American Government, and whether our literature and teachings were against any church in particular.

Q. The question of being anti-catholic was discussed at his home, but not the question of the flag?

A. To the best of my knowledge that is correct.

Q. You went to the meeting of June 20th?

A. Yes sir.

Q. No meeting was held on June 19th?

A. No sir,—due to the fact that we agreed to wait and come before the City Council. We did not even advertise or print any handbills on that particular topic.

Q. You were questioned at the meeting on June 20th?

A. Yes sir.

Q. At that meeting did you, or any of the Jehovah's [fol. 181] Witnesses, berate Mr. Hollohan?

A. No sir.

Q. Was there anything disorderly said about Mr. Hollohan?

A. I would not say there was.

Q. Was your conduct before the Council orderly and good generally?

A. We endeavored to do that. We know the interpretation of the word "gentleman" and we endeavored the best we could to be that in the commotion and under the circumstances there.

Q. Tell us about the Mayor at that meeting?

A. After some small local business had been concluded, the Mayor asked if anyone else had any business to present. I acted as Chairman of our local group of Jehovah's Witnesses, and I told him that I had been appointed on a Committee to advise him that we had some matter to come up, and I introduced the other two members of the Committee,—Mr. Laupert who had already testified, and Mr. Robert Messerman. As a brief introduction, I told him that we [fol. 182] represented the local, Havre de Grace Company of Jehovah's Witnesses, and that we worked with the Watchtower Bible and Tract Society, that I was not preaching but referred them to Matthew 24, verse 14, and I told him that I would try not to take up too much time, and that I would go into a letter of application that had been presented to Mr. Hollohan,—that it was not a private letter and that it was under date of June 8th——

The Court: Would it be enough to say that an application was made,—the one that we had here; and that, after a general discussion of the matter, they were denied the use of the park.

Mr. Covington: I do not think that we can get through it that quickly. I take the stand that the action of the Council was arbitrary and capricious. I tried to get that fact from the Mayor but his memory was insufficient and I could not get that information from him. The Council has no stenographic report, or we could agree on that. We have a stenographic report and we have offered it here, but it was objected to. If they can produce a stenographic tran- [fol. 183] script, we will take that. We have a transcript that was taken and properly transcribed.

Mr. McNabb: I would not care to do that.

The Court: Can't we shorten this record. I do not think that all of this is important.

Mr. Covington: I haven't offered any other witness to go through these details.

[fol. 179] Q. What was said about that?

A. Like Mr. Laupert, I brought out our endeavors to obey the laws of the land where we happened to live; and, when they got to the point where they conflicted with the laws of God, then we went according to our conscience like all other Christians. That seemed to take the Mayor somewhat back at the time. Then he asked us about our teaching and if we were particular against the Catholic Church, and Mr. Laupert endeavored to advise him that we were not against any particular church, but endeavored to show the truths of the bible. The Mayor advised us not to hold the meeting on June 19th, but to bring the matter before the City Council on June 20th. We agreed to do so, and he said at that time that Mr. Hollohan's reasons were personal when he refused us the use of the park, and that he would see that justice was done there.

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Q. The question of being anti-catholic was discussed at his home, but not the question of the flag?

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Q. No meeting was held on June 19th?

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Q. At that meeting did you, or any of the Jehovah's [fol. 181] Witnesses, berate Mr. Hollohan?

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Q. Was there anything disorderly said about Mr. Hollohan?

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The Court: Would it be enough to say that an application was made,—the one that we had here; and that, after a general discussion of the matter, they were denied the use of the park.

Mr. Covington: I do not think that we can get through it that quickly. I take the stand that the action of the Council was arbitrary and capricious. I tried to get that fact from the Mayor but his memory was insufficient and I could not get that information from him. The Council has no stenographic report, or we could agree on that. We have a stenographic report and we have offered it here, but it was objected to. If they can produce a stenographic tran- [fol. 183] script, we will take that. We have a transcript that was taken and properly transcribed.

Mr. McNabb: I would not care to do that.

The Court: Can't we shorten this record. I do not think that all of this is important.

Mr. Covington: I haven't offered any other witness to go through these details.

(At this point Court adjourned.)

Q. Mr. Hopkins yesterday, at the close of Court, we were talking about what took place at the council meeting. I do not expect you to give us word for word what took place there. Please tell us what happened when the matter of the application was called to the attention of the Council?

A. First, as I said yesterday, I introduced our representatives,—our committee, consisting of myself, Mr. Laupert and Mr. Messerman. After stating that we were working in conjunction with the Watchtower Bible and Tract Society, and that we were preaching the gospel according to Matthew 24 Chapter, 14 verse, then we went into the matter [fol. 184] of the application for the use of the Havre de Grace City Park to be used for some public bible lectures, which were for the benefit of the general public.

Q. Do you know this defendant's exhibit, which has been marked for the purposes of identification,—it is a letter dated June 8th, 1949?

A. Yes sir.

Q. That is the letter that you were talking about yesterday?

A. Yes sir.

Mr. Covington: I now offer this letter in evidence.

Thereupon it was marked "Defendants' Exhibit No. 1" and is as follows:

DEFENDANTS' EXHIBIT No. 1

"Jehovah's Witnesses, Kingdom Hall,
319 Alliance Street, Havre de Grace,
Md., June 8, 1949.

Mr. Edward E. Hollohan, Chairman—Public Park Committee, City of Havre de Grace, Md., 712 S. Union Avenue, Havre de Grace, Md.

[fol. 185] DEAR SIR:

The Havre de Grace Company of Jehovah's Witnesses do hereby request to use the local public park for a series of bible talks.

We desire to have access to and use of the 'band stand' and its facilities and also of the park ground and facilities within a moderate radius of said 'band stand' for the purpose of discussing biblical subjects of public interest and welfare.

These bible discourses relate to an explanation of bible prophecy and are of the same nature as other series that have been advertised and held at several places in Havre de Grace and immediate vicinity during the last year or so. Similar series have also been sponsored by the Watchtower Bible and Tract Society, Inc. of Brooklyn, N. Y. in Aberdeen and Bel Air.

The subjects, dates and times of this present anticipated series are as follows:

1. 'Humanity at the Crossroads', Sunday, June 12, 1949 at 2 P. M.

[fol. 186] 2. 'Victory over death', Sunday, June 19, 1949 at 2 P. M.

3. 'Palestine in Prophecy', Sunday, June 26, 1949 at 2 P. M.

4. 'The two great commandments of life', Sunday, July 3, 1949 at 2 P. M.

These talks usually last about an hour. They show the cause for the suffering of mankind and the remedy therefor and they are designed to prove that Almighty God will set up a Kingdom of Righteousness over earth that will stand forever, Daniel 2—44; and bring peace, prosperity and happiness and everlasting life to all men of Good Will toward Jehovah God. Psalm 145—13 and 16; Isaiah 25—6-8; Revelation 21—1-4.

Furthermore they show that we are living in the 'Last Days' 2 Timothy 3—1-5, and that the 'time of the end' Daniel 11—27 and 12—4 of the present old world approaches the Cataclysm of Armageddon, Revelation 16—14-16, which will fully and completely obliterate all opposers to the established Kingdom of Almighty God in the earth, Proverbs 2—21 and 22, and bring these additional [fol. 187] blessings to obedient mankind.

We do, therefore, solicit your assistance and co-operation in the obtaining and granting to us the permission to

use our City's park for the above stated purpose and reasons.

We are—Very truly yours,

The Havre de Grace Co. of Jehovah's Witnesses,
William J. Hopkins, Chairman of Committee-319 Alliance Street, Havre de Grace, Md. Phone: 372-R."

Q. Now, Mr. Hopkins, did you read that letter to the City Council?

A. Yes sir,—I did,—after advising that the letter was addressed to Mr. Hollohan under date of June 8th, 1949, and that I had delivered it to him personally on June 9th; and I stated that these bible lectures had been given in such places as Aberdeen and Bel Air. I asked, before I started reading it, if all of the members of the Park Committee were present,—Mr. Kimball, Mr. Green, Mr. Barrett and Mr. Hollohan; and the Mayor advised me that [fol. 188] they were present. Then I proceeded to read this letter under the date of June 8th——

Q. After you had finished reading that letter, what took place,—tell us that in your own words step by step, but you do not have to give it to us word for word,—just everything that you remember?

A. After I finished reading the letter, I said that the next thing that we would like to know was if Mr. Hollohan had the copy that I had presented to him, and I said that I had also given him some decisions of the Supreme Court in regard to the use of parks, and particularly the case about Laconia, Iowa,—I said that we would like the return of this about the Supreme Court decisions, as we wanted it for our own use. Then Mr. Hollohan acknowledged that we had given it to him but that he had mislaid it. He said, "I haven't got it with me. I received from these gentlemen what they said was an application for the use of the park last Sunday". I asked these gentlemen if they were familiar with the contents of the letter, and they [fol. 189] answered "no". As Mr. Lappert had a copy of the letter, I asked permission to read it. Permission was granted by Mayor Lawder, and I read the letter that has been exhibited here under date of June 8th, 1949, and which I had given to Mr. Hollohan on June 9th, 1949.

Q. Now, without going into detail as to what occurred, tell us anything that was said at the Council Meeting for

the first time to you or Mr. Laupert about refusing to salute the flag,—the refusal of the Jehovah's Witnesses to salute the flag, or had that issue been raised before that?

A. I recall most permanently that it first came up at the Council Meeting,—I think that it was Councilman McLhinny who raised the question about saluting the flag by Jehovah's Witnesses.

Q. What was said by Mr. Laupert about that?

A. He endeavored to use the bible to support that, but he didn't get very far in that respect.

Q. What was said?

The Court: I do not think that it — any abridgement of your rights to limit you on the discussion that took place [fol. 190] in the council room. He is substantially relating this in detail. This is the second day of a hearing on what we regard as a minor misdemeanor, and we must get through with this case.

Mr. Covington: It may be a minor misdemeanor, your Honor; but grave rights are involved. I do not want to be prolix about it and I want to help the Court to get along with the trial, but I feel that this is important to these defendants.

Q. Give us the substance of what was said there rather than word for word.

A. As I recall it, Mr. Laupert advised Mr. McLhinney on this point of saluting the flag,—that according to our teachings——

The Court: Wouldn't you have sufficient protection just to say that there was a discussion about that?

Mr. Covington: Since this issue was injected into the case by the prosecution itself, without some defense, the [fol. 191] jury will not know the reason for it, and I would like to remove from their minds any misunderstanding in respect to that matter. When a charge of that kind is made, we are entitled to confront it *was* a defense. I am not asking him for everything that was said at the meeting, or something that was not said there. It is admitted that this went on in the Council Room at the meeting, and we should be allowed to answer it. We claim that we were not allowed a full and fair hearing at the time that we were denied this permit, and that the action of the council was unreasonable, arbitrary and capricious.

The Court: That is not for this jury,—they are not concerned with the hearing before the City Council. This jury, under the warrant in this case and under the opening statement by the State's Attorney for Harford County, are only interested in a charge that a misdemeanor was committed in the city park at Havre de Grace on a certain date.

Mr. Covington: And the reason they are charged with a misdemeanor is because the Council refused them a [fol. 192] permit to use this park. That was mentioned in the opening statement made by the State's Attorney.

The Court: In his opening statement, the State's Attorney outlined his case.

Mr. Covington: We are in a different position. The plea made by counsel is invalid under the constitution and under the decisions of the Supreme Court.

The Court: I do not see that there is any cause for further arguments. The purpose of this case is to get all the essential facts before this jury, and we are not concerned with prolix defenses, or matters that the Court does not think germane to your defense, or material for the consideration of this jury.

Mr. Covington: I have no intention of being discourteous or disrespectful, but——

The Court: I am not ruling,—I am just making a statement.

Mr. Covington: I take a statement from the Bench as a ruling. I listen, I hear and I take in fully what it is. [fol. 193] What I mean is that, as Judge of this Court, I am taking your statement as a ruling.

The Court: It is not intended to be a ruling.

Mr. Covington: I do not know if it is necessary to take an exception——

The Court: There is nothing before the Court at the present time.

Q. Just let us have *to* substance of what took place in regard to the saluting of the flag,—just that issue and not the issue about bearing arms. These two issues came up before the Council but only give us what you recall about the issue of saluting the flag,—tell us that to the best of your recollection?

A. That is rather difficult under the conditions that existed there, because from time to time there were a lot of interruptions from various councilmen. The question in

regard to saluting the flag was brought up by Mr. McLhinney and Mr. Laupert endeavored to answer him that, [fol. 194] according to our teachings and according to the bible, it was contrary to our belief to salute the flag. It was not that we did not respect the flag of our country, and that we had many cases in the Courts of this land——

Mr. McNabb: I object——

Mr. Covington: I asked him just to give the substance of what was said.

The Court: I think that you and I understand each other, Mr. Covington, but you have a rather loquacious witness who does not answer the questions directly. It is perfectly satisfactory to me for you to have him give the substance of any matter that you think important. I would like the witness to confine himself to direct statements.

Mr. Covington: We would get through pretty quickly if counsel would let us proceed. I am not trying to delay this matter, and I am just as anxious to get through as you are.

The court: Let's see what you do about that.

[fol. 195] Q. Mr. Hopkins go ahead and don't give it to us word for word,—just the substance of what was said about saluting the flag——

The Court: He has already said, in a reply to that question, that, when the issue was raised, Mr. Laupert tried to answer Mr. McLhinney by quoting appropriate sections of the bible and God's Law.

Q. What happened on the other issue in controversy before the City Council?

A. Before Mr. Laupert finished answering Mr. McLhinney about saluting the flag, he was interrupted by Mr. Spragg, and the other issue was brought up at the hearing. Just before the final vote was taken, a question was brought up by Mr. Barrett, and it was about bearing arms,—he asked, "Is it true that each of Jehovah's Witnesses is an ordained minister and that as such he is exempt from fighting for his country?" Mr. Laupert endeavored to answer that from the bible, and everyone of these gentlemen on the council said, "Leave the bible out of it and answer briefly," and we were not allowed to refer to the bible. [fol. 196] Q. Did you tell them that you were ministers

or clergymen, and that it was contrary to your teachings for you to bear arms?

A. We didn't get that far.

Q. Did you do it?

A. Mr. Laupert endeavored to, as far as he was allowed to go.

Q. Was Mr. Hollohan berated by you before this Council Meeting?

A. Not to my knowledge, sir,—he was treated the same as anyone else.

Q. What were you going before the Council for anyway?

A. In regard to our letter of application for the use of the Havre de Grace City Park. We wanted to use it for meetings beginning June 12th and extending through July 3rd. Mr. Laupert found out who was in charge of the Park Committee,—Mr. Hollohan, and then this letter was drawn up, and we succeeded finally in——

The Court: The witness has been all through that.

[fol. 197] Q. You went there for a lawful purpose,—to obtain a permit to use the city park,—were you allowed a full and fair hearing on that application?

A. I would say not.

Q. Did you get the evidence and all of your reasons before the Council?

A. No sir,—there was quite a bit of curtailment there.

Q. Were they unfriendly towards you?

A. As things proceeded along, I would say they were.

Mr. Covington: That is all.

The cross-examination.

By Mr. McNabb.

Q. You inferred that you were interrupted all the time at the Council Meeting,—what do you mean by that?

A. Mayor Lawder presided, the Chairman of our side was given permission to speak, and members of the Council interrupted from time to time,—before he had finished speaking lots of times. Mr. Laupert did most of the talking and later on Mr. Richter attempted to read something from Awake Magazine.

[fol. 198] Q. You mean there was a lot of commotion there,—arguments and everyone was talking and everyone was asking questions?

A. Yes sir. They were not in order and in that respect it caused quite a bit of confusion. It made it a little difficult for me to follow it along, as it came out and they were seated along the sides of the table like that. Mr. Laupert and Mr. Messerman first wanted the Council to intervene, without getting the Chairman——

Q. There were some accusations made by Mr. Laupert and you against Mr. Hollohan, as to the way that he had handled the matter, weren't there?

A. I would not — that they were accusations, sir. We asked if he had the letter after we had called attention to the fact that the letter had been given to him, and he said that he did not have it. Then we advised the Council that we had a copy of the letter and asked permission to read it.

Q. Didn't you accuse Mr. Hollohan at any time during this meeting in the performance of his duties in not giving [fol. 199] you the proper consideration?

A. I think that I can fairly say that we did not try to bring the matter out,—we did the best that we could there under the trying and unsettled conditions, and circumstances. Some members of the committee, especially Mr. Barrett, asked several questions about my application,—if is in the written testimony. Mr. Hollohan also acknowledged the receipt of the Court decisions, after they said they would like to see the Court decisions.

Q. You live in Havre de Grace?

A. Yes sir.

Q. How long have you lived there?

A. I have resided at the Alliance Street address slightly more than a year,—the property was acquired in the early part of June, 1948, and I moved there in the Fall.

Q. Where did you live before that?

A. I was living on Ford Avenue right at the edge of Havre de Grace.

Q. How long have you lived in this vicinity?

[fol. 200] A. Practically all my life, except a few weeks or a few months.

Q. Have you been living around Havre de Grace?

A. I was born and raised at Aldino,—six or seven miles out from Havre de Grace on the back road leading to Level and Churchville. I went to high school and graduated in 1936.

Q. Your residence at No. 319 Alliance Street is where they customarily hold the services for the Jehovah's Witnesses, is it not?

A. Yes sir, over the part that is called Kingdom Hall, which is open to everyone who feels like, or is inclined to hear the bible discussed.

Q. How often do you have services there,—do you have a regular schedule?

A. Yes, sir,—we try to adhere to one, but the best and outstanding ones are on Friday evening. When our weekly services meet, we try to find the Better Way, and I, myself, proclaim the Gospel of the Kingdom of God, and we follow the theocratic minister's school.

[fol. 201] Q. So that your principal services are on Friday evening?

A. On Sundays we have our weekly Watchtower study dealing with the tracts, the bible and the scripture. Anyone can come who cares to come.

Q. Who comprises your family?

A. My wife and stepchildren.

The Court: In what way can that affect the issue here,—how many children he has?

Q. How many children do you have?

A. Two at the present time.

Q. And all four of your reside at this place?

A. My wife, myself and the children, as far as we are concerned.

Mr. McNabb: That is all.

The redirect examination.

By Mr. Covington:

Q. You say that you presented the Court decisions,—was that in a letter dated June 20th, which has heretofore been marked in this case for the purpose of identification, [fol. 202] and which we had here yesterday when Mr. Laupert was on the stand?

A. Yes sir.

Q. This is the letter?

A. Yes sir.

Mr. Covington: That is all.

Testimony of witness concluded.

Mr. Covington: I now wanted to offer this letter in evidence.

Thereupon the said letter was marked, "Defendant's Exhibit No. 2," and is as follows:

DEFENDANT'S EXHIBIT No. 2

"Jehovah's Witnesses, Kingdom Hall,
319 Alliance St., Havre de Grace, Md.
June 20, 1949.

Mayor and City Council, Havre de Grace, Md.

GENTLEMEN:

Public parks are now effectively used in many localities for public lectures in the expansion of truthful worship. The legal right to use parks for preaching 'This Gospel of the Kingdom'; Matthew 24-14 is well established. [fol. 203] The Courts have held that parks are open for assembly, discussion of subjects of public interest and exchange of idea from the time of their dedication.

Such decisions are as follows:

1. Hague v. C. I. O., 307 U. S. 496, 59s Ct. 954.

2. Schneider v. New Jersey, 308 U. S. 147; 60 S. Ct. 146.

3. Commonwealth v. Gilfedder, 321 Mass. — 1947 A. S., 73 N. E. 2d 241.

4. Sellers v. Johnson, 163 F. 2nd 877; CCA 6th.

5. Saia v. New York, 68 S. Ct. 1148.

The undersigned request a copy of any regulation governing the local city park and its use.

Inasmuch as Jehovah's Witnesses are a duly recognized organization and have a message of great importance and comfort for all mankind, the Havre de Grace Company of Jehovah's Witnesses request permission to use this city's park. The meetings proposed to be held in the park come within the guarantee of freedom of assembly and freedom [fol. 204] of worship appearing in the constitutions of this State and the United States. We believe that a denial of permission to use the park as a place of assembly for public bible talks would be a violation of our rights of freedom of

speech, freedom of assembly and freedom of worship; contrary to the constitutions of this State and the United States of America. We also believe that a refusal of permission to make use of the park for such purpose, while allowing other organizations to use it, is not equal justice under the law; but is discriminatory and a denial of equal protection of the laws.

To enable a speaker to be heard in a park, *sound equipment*: It is held by the Supreme Court of the United States may be used in the exercise of free speech, subject to reasonable regulation and control. Therefore, we desire to use sound equipment while holding these proposed meetings. See *'Right to hear and to be heard'* in Awake Magazine of August 22, 1948.

Respectfully yours, Adam F. Laupert, Co. Servant;
William J. Hopkins, Asst. Co. Servant."

[fol. 205] Thereupon DAISY W. CLARKE, a witness of lawful age, being produced on behalf of the Defendants, first being duly sworn, testified as follows:

The direct examination.

By Mr. Covington:

Q. State your full name and address?

A. Daisy W. Clarke, 938 Bomb-Loop, Aberdeen Proving Ground.

Q. You are one of Jehovah's Witnesses?

A. Yes sir.

Q. And an associate of the congregation of Jehovah's Witnesses in Havre de Grace?

A. Yes sir.

Q. What work or occupation do you follow?

A. I have been a secretary and a stenographer all of my life.

Q. You are a stenographer?

A. Yes sir.

Q. Did you take a long stenographic course?

A. Yes sir. I took a full secretarial course after leaving school.

Q. Where?

[fol. 206] A. At Jamaica, British West Indies.

Q. Did you thereafter enter employment as a secretary and stenographer?

A. Yes sir,—I was employed in that capacity.

Q. How many years have you been so employed?

A. Ten years.

Q. Were you requested by Mr. Lanpert to make a stenographic record of the proceedings of the City Council of Havre de Grace on an application by Jehovah's Witnesses for the use of the City Park?

A. Yes sir.

Q. This meeting was on June 20th, 1949,—did you go there?

A. Yes sir,—I did.

Q. Did you take down in shorthand and transcribe what actually took place at this meeting?

A. Yes sir,—I did.

Q. I show you a paper that had been marked "No. 3" for the purposes of identification, and ask you explain to the Court and jury what that is?

[fol. 207] A. This is a transcript that I made from my notes taken at this hearing.

Q. Your shorthand notes actually report what took place there, Miss Clarke?

A. Yes sir.

Q. This typewritten document, which has been marked No. 3 for identification purposes, is an actual transcription of what you put into your shorthand notes?

A. Yes sir.

Q. This paper accurately reflects what took place upon the occasion of this Council meeting?

A. Yes sir.

Mr. Covington: I now offer this paper in evidence.

Mr. McNabb: I object——

The Court: Objection sustained.

OFFER IN EVIDENCE

The paper that was excluded is as follows:

"Minutes of the Meeting (JW)

City Council of Havre de Grace, Maryland.

[fol. 208] The meeting with the City Council of Havre de Grace, Maryland, concerning the use of the Park facilities

for public meetings of Jehovah's Witnesses was held on Monday, 20 June, 1949, beginning at 8.30 P. M.

Those present consisted of the following:

Mr. Lawder (Chairman of the Council), Mr. Kimball, Mr. Barrett, Mr. Spragg, Mr. McLhinney, Mr. Green, Mr. Hallihan (Hollohan), Mr. Warfel (City Clerk).

Witnesses represented:

Mr. Laupert, Mr. Richter, Mr. Hopkins, Mr. Messerman.

The meeting was opened by the Chairman who asked the Jehovah's Witnesses to present their case. Mr. Hop- [fol. 209] kins introduced Messrs. Laupert and Messerman as representatives of the Watchtower Society for the local company of Jehovah's Witnesses who are preaching their gospel of the Kingdom in accordance with Matthew 24-14 (quoted).

The Proceedings Continue

Hopkins: A letter of application under date of June the 8th (1949) was presented to the Chairman of the City Park Committee of Havre de Grace, Mr. Hollohan, on June the 9th, concerning use of the public park for Bible lectures, which lectures had been given in many places. Are all members of this committee present? Mr. Kimball, Mr. Green, Mr. Barrett, Mr. Hollohan . . .?

Mayor: They're all present.

Hopkins: At that time (June 9th) Mr. Hollohan was presented with a letter of application for our use of the Park and in which was set out the reasons for wanting same. We would like to know if Mr. Hollohan has it here.

Hollohan: I have not got it.

[fol. 210] Laupert: We have a copy of the application which was presented to Mr. Hollohan and he was also given copy of a Decision which was made by the United States Court pertaining to the use of a park by Jehovah's Witnesses. (Lacona, Iowa). We would like to have this pamphlet returned for our use.

Hollohan: I know that you gentlemen did give it to me but it was mislaid and I have not got it. I received that. All these gentlemen know what the application was about, —for the use of the park last Sunday.

Hopkins: Do you say that all of these gentlemen are familiar with the contents of the letter?

Hollohan: No.
Laupert: We have a copy of the letter here.
Hopkins: May I read it?
Mayor: Please read it.

Hopkins read letter dated June 8th which was delivered to Mr. Hollohan on June 9th. (cc already forwarded).
[fol. 211] Hollohan: The only application I received from you was for last Sunday. When I refused you permission to use the park, that gentleman (pointing to Laupert) said, "We are going to use the park whether you like it or not".
Mayor (Speaking to Laupert): Did you say that?
Laupert: I said "We would use the park" but not "whether you like it or not". You said, "I'll be damned if you are going to use it".
Hollohan: If I said that, then I quote you as saying, "Whether you like it or not". I said, Is it a challenge or a threat? If so, I take you up on it".
Barrett: Was it written?
Hollohan: No.
Barrett: Did you receive a copy of application just read?
Hollohan: No, I did not
Spragg: I wonder whether this gentleman (Hopkins) delivered it?
[fol. 212] Hopkins: Before God I delivered it personally the same afternoon after talking to Mr. Kimball,—on Thursday, June 9th. On the evening of June 8th, I first went to Mr. Hollohan's home. It was on the evening of the local High School Graduation Exercises and he and his family were prepared to attend these exercises. He gave me the names of the other members of the Committee, and stated that he did not know whether he would have to work the next day or not but would possibly be home in the morning and I could see him then. I called at his home the next morning and no one answered the door so later I called him on the 'phone. Mr. Hollohan answered the 'phone and stated that he was ready to go to work in Perryville and that, if he did not have to go on duty, he would probably be home in 15/20 minutes. I called at the end of that time and his daughter told me that he was not at home. I finally contacted him at the Elks Hall at Warren and Stokes Street at about 3.30 P. M. June 9th and delivered the letter of application to him personally. I may state [fol 213] that he opened the envelope but, to the best of

my knowledge, did not read it then. He fumbled it around in his hands.

Laupert: The letter was written and entrusted to Mr. Hopkins to deliver personally.

Mayor: As I see it, the two Sundays in qugstion are now past. What do you want?

Laupert: We want it for the next two Sundays.

Barrett: Did you give them any reason for your denial?

Hollohan: The last time I talked to these two gentlemen was on Thursday or Friday night. They followed me out of the drugstore. My advice was to give up the idea and I told that gentleman, Mr. Hopkins, that it was Flag Day, and that we were going to put benches, etc. in the park. I would not give him any answer due to the fact that there are six gentlemen besides myself on this Council.

Laupert: Flag Day was last Sunday, June 16th.

Hollohan: You are right there.

Kimball: He (Hopkins) spoke to me at the store. He [fol. 214] said he had been to see Mr. Barrett. I do not know whether he saw any of the other gentlemen or not. I told him that I had seen Hollohan go by at about 11:00 A. M. on that day (June 9th). He said he would go down to the house to see him. I asked "what are you going to do in the park?" He said, "It is going to be a Bible study. We are going to read the Bible and have a study". I asked whether there would be any music or singing and he said, "No, just a study". He said (Hopkins) "I contacted Mr. Barrett and Mr. Barrett was favourable towards it". I said I was favourable towards it too if that was so.

Mayor: These gentlemen came to my house on Thursday or Friday night and told me that they desired to hold some meetings in the park. I told them that no action could be taken by me but that they should appear before the City Council on Monday night. Tell them what I said.

Laupert: The Mayor was courteous and gentlemanly throughout and I will say that, if everyone were as courteous [fol. 215] as he, there could be no complaint. The Mayor promised that the matter would be given justice. He said that Mr. Hollohan had said he would not issue a permit for any mixed congregation to use the park. The Mayor told me that it was not time yet for equality of races but that the time would come when it would be so. I said I agreed with him to a certain extent. You will find that

Jehovah's Witnesses are not here to cause trouble and to be mandatory but we are asking for our equal rights. Any other course would be contrary to the Constitution.

Mayor: I advised you not to use the park, didn't I?

Laupert: Yes, you did.

Spragg: We had considerable difficulty with this organization some years ago. They started giving away literature and we had to stop it.

Mayor: I asked them whether they were communistic and advocated the overthrow of our Government and he said "no". I also asked if their teachings were against the Catholic Church.

[fol. 216] Laupert: We are not communistic and——

Spragg: We had considerable trouble with these people some time ago getting them off the streets with the literature.

McLhinney: One question: Is there anything in your regulations which prevents you from saluting the flag?

Laupert: Yes, in accordance with the teachings of the Bible. The Supreme Court of the United States has ruled that Jehovah's Witnesses are not violating any of the laws of the land by refusing to do this. We respect the flag and what it stands for and have fought in the Courts of this land to uphold the liberties guaranteed by the flag. There are many cases in the files of the country. You know there are 256 denominations and about 700/800 faiths, each with their own form of worship——

Spragg: Allow me to correct you,—there are 1800 in the world.

Laupert: We are speaking of our country. I think all you gentlemen will reason with us.

[fol. 217] Spragg: Why can't you conduct your meetings in your church as the other denominations do? We do not see the others leaving their buildings to go elsewhere.

Laupert: We know that politicians do not confine themselves to one building. Do you speak in one building? I am referring to your campaigns.

Spragg: We do not want a sermon. (To members of Committee) What do you recommend?

Hollohan: I recommend that their application be denied.

McLhinney: You say that the Bible condemns the saluting of the flag?

Laupert: Yes,—I would like to explain the matter from the Bible——

Spragg: We are not here for a religious discussion. I second Mr. Hollohan's motion.

Mayor: I think the matter should be answered relative to the question of saluting the flag.

Laupert: The answer is here in the Bible——

Many Voices: We are not here to hear about the Bible—— [fol. 218] Laupert: The Bible is what we go by and the Constitution of this country is founded on the Bible. If we deny it, then we deny the Constitution.

Mayor: I told you that the park belonged to the City and that the Council are custodians of it.

Laupert: I believe that the park belongs to the taxpayers and not to the city.

Mayor: Do any of you pay taxes?

Hopkins: I have a tax receipt with me.

Mayor: That's right,—you pay taxes for your place down there.

McLhinney: How many citizens of Havre de Grace belong to your group?

Laupert: I would say, roughly, about fifty.

McLhinney: Are any of them here?

Laupert: Yes.

Richter: I am a citizen and a taxpayer. I should like to read to you gentlemen some excerpts from a similar case which was ruled on by the Supreme Court of the U. S. [fol. 219] Have I your permission to read, Mr. Chairman?

Mayor: Yes.

Richter reads from Awake of August 2, 1948—"Right to Hear and be Heard"—reads several paragraphs.

Spragg: That speaks of an arrest and has nothing to do with this. We will not allow the city park to be used by your organization for such religious meetings.

Richter: If you will allow me to read, you will see that the case is similar. It speaks of a town like Havre de Grace and in this case too the City Council denied them permission to use the park which belongs to the public and not to the City Council. Would you deny us the use of the streets?

Spragg: Will you listen? No, but you create a nuisance.

Richter: I obtained permission from the Chairman to read.

Mayor: If you gentlemen are not orderly, I shall have to ask you to sit down.

Richter: I am sorry. May I read?

[fol. 220] Voices: That is not necessary.

Richter again attempts to read from AWAKE.

Spragg: I move that we second the motion made by Mr. Hollohan.

Warfel: The motion was not put but merely mentioned.

Hollohan: I make the motion that the use of the park by Jehovah's Witnesses be denied.

Spragg: I second the motion.

Mayor: Are you gentlemen ready to take a vote on the matter?

Barrett: Question: Is it true that each of Jehovah's Witnesses is an ordained minister and that as such he is exempt from fighting for his country?

Laupert: I can show you by the Bible——

Voices: Leave the Bible out of it and answer briefly.

Laupert: Yes, but Jehovah's Witnesses are preaching the gospel of the Kingdom and anyone who comes to listen to them is not asked to join anything. They are perfectly free to do as they please. We invite them to hear the truth [fol. 221] as contained in God's Word, the Bible. We are making a request to use the park for two Sundays for the preaching of this gospel.

The Chairman then took the vote and it was unanimously agreed that the use of the park should be denied to Jehovah's Witnesses, each saying "nay" in turn.

Mayor: The matter is settled. The Councilmen all voted against your use of the City Park for your meetings.

The meeting then adjourned.

The Mayor was then presented with a letter relative to the use of public parks and Court decisions on five cases. Letter requested copy of any regulation governing use of parks. Stated that Jehovah's Witnesses are a duly recognized organization. The denial of use of parks would violate our constitutional rights and this actio would also be discriminatory because other organizations use it. Advised them of U. S. Supreme Court ruling on use of sound equipment and stated that we desired to use it in our public [fol. 222] meetings. See AWAKE, Aug. 22, '48.

Also presented him with above mentioned AWAKE, and December 8, 1947 AWAKE—Mobocracy in Lacona, Iowa.

Mr. Dyer, City Attorney, and Mr. Warfel, City Clerk, were asked by brothers Richter and Laupert for an ordinance regulating use of parks. They advised that the City had some but they were locked in their regular Council Room (now under repairs) and could not be obtained for a month or more.

Q. You heard everything that went on there?

A. Yes sir.

Q. Using these stenographic notes to refresh your recollection, tell us what took place at this Council Meeting?

A. Mr. Hopkins first presented the letter of application,—he read it I think.

Q. You can refer to those notes and give us an accurate report?

The Court: She will be allowed to refresh her memory from it, but will not be permitted to read those notes. [fol. 223] She may look at those notes and refresh her memory and then testify, but she cannot read from them.

Mr. Covington: The evidence shows that certain notes were taken at this meeting and that it was conducted by the Mayor. We offered these notes in direct evidence to impeach the Mayor and——

The Court: There is nothing before the Court.

Mr. Covington: I again offer these notes in evidence.

Mr. McNabb: And I again object to them.

The Court: Objection sustained.

Mr. Covington: I will note an exception, your Honor.

Q. Use those notes to refresh your memory and then testify as to what went on at this meeting?

A. Mr. Hopkins read the letter of application after Mr. Hollohan said that he did not have the copy that had been given to him. Mr. Laupert then asked for permission to speak, and Mr. Hollohan said that Mr. Laupert demanded [fol. 224] the use of the park, and was going to use it whether he liked it or not, but Mr. Lauper repudiated that, and said that Mr. Hollohan had been the one who had acted rough. He then spoke of his interview with the Mayor, and that Mayor, as Chairman of the meeting, had led them to believe that we would get the use of the park, and that he had made arrangements for speakers, etc. Then the

issue of the flag salute came up, and first Mr. Laupert tried to prove by the Bible that, though they respected the flag, they did not salute it because that was contrary to God's Word. He did not get far with that proof, because he was interrupted by various questions from the different councilmen. They endeavored to answer that,—Mr. Laupert, Mr. Hopkins and Mr. Messerman. Then another question was brought up about war service; and Mr. Laupert and Mr. Hopkins also tried to show from the Scripture what our stand was on that, and also offered the evidence of some Supreme Court decisions. Then Mr. Richter read from one and also from Awake magazine. He was endeavoring to prove our position on this question [fol. 225] and then, after some more interruptions, it was decided that we were not to have the use of the park. No reason was tendered except *except* we were told we could not use it.

Q. Was there a letter presented later,—a letter of June 20th, 1949?

A. Yes sir.

Q. In addition to being a Witness, you are also a stenographer?

A. Yes sir.

Q. Do you know of any disorderly or disrespectful acts done by Mr. Laupert, Mr. Hopkins or any of the other Jehovah's Witnesses?

A. No sir. We endeavored to make the matter clear that we were not mandatory, nor were we disrespectful of the authority of the Mayor and City Council. All we wanted to have was our right, and we should have had it, to use the park,—the use of the park was the reason that we were there. That is the gist of what went on there.

Q. Did you use abusive language to anyone, or about [fol. 226] anyone there?

A. No sir.

Q. You were respectful at all times?

A. Yes sir.

Q. Did the Council claim that some of you were disturbing about the matter?

A. Some man seemed to be rather irate about us.

Q. Do you recall any members of the Council,—if so call*ed* them by name,—who had anything to say?

A. I think that Mr. Hollohan spoke at one time, and Mr. Barrett, Mr. McLhinney, Mr. Spragg and Mr. Kimball spoke up and asked questions.

Q. Did Jehovah's Witnesses do anything out of the way *the* precipitate these irate questions.

A. No sir. I think that the issues that were brought up by the Council,—saluting the flag and about army service; and these men were rather worked up about these matters.

Q. Did Jehovah's Witnesses introduce these matters, or did the Council bring them up?

A. The Council brought them up.

[fol. 227] Mr. Covington: That is all.

Mr. McNabb: No questions.

Testimony of witness concluded.

Thereupon DANIEL NIEMOTKO, a witness of lawful age, being produced on behalf of the Defense, first being duly sworn, testified as follows:

The direct examination.

By Mr. Covington.

Q. What is your full name?

A. Daniel Niemotko.

Q. Where do you live?

A. No. 124 Columbia High, Brooklyn, New York.

Q. What is your occupation?

A. I am a minister of the gospel.

Q. In connection with what group of people or organization?

A. In connection with Jehovah's Witnesses, and the legal corporation is the Watchtower Bible and Tract Society.

Q. And the headquarters of that Society is where?

A. In Brooklyn, New York.

Q. In your capacity as minister for that organization, [fol. 228] do you answer calls and give talks before congregations and at public assemblages in various parts of the State, or sections of the country?

A. Yes sir. I am assigned as a qualified minister to speak at such places.

Q. And you have spoken in more than one place in this section of the country?

A. Yes sir,—in the northeast section of the country.

Q. You have spoken at many places and many times?

A. Yes sir.

Q. In what states have you spoken?

A. Rhode Island, Connecticut, Massachusetts, Maryland, Pennsylvania, New Hampshire, New York,—that is about all.

Q. Did you receive an invitation or a call to come to Havre de Grace in June, 1949, to give a talk?

A. Yes sir.

Q. And, in answer to that request did you appear in Havre de Grace?

A. Yes sir.

Q. When did you get there?

[fol. 229] A. I arrived there on Saturday evening, June 25th.

Q. When were you to give your talk?

A. On Sunday afternoon,—June 26th.

Q. After you- arrival there, did you meet Mr. Laupert and other members of this congregation?

A. Yes sir.

Q. Did you then learn of the proceedings that had transpired before the City Council on June 20th of the same week?

A. That's right.

Q. And they told you that they had planned to go ahead and hold their meeting in the park?

A. That's right.

Q. Did you appear at the park on Sunday, June 26th?

A. That's right.

Q. Tell us about that?

A. Do you mean our actual appearance at the park?

Q. Tell us what took place there?

A. Mr. Laupert explained to me the situation and the refusal of the City Council to give him the use of the park for the Bible lectures, which were to inform all persons [fol. 230] concerning the Bible truths which are so necessary to mankind's peace of mind and security. I asked to see the park and then I was confident that it was large enough to hold the proposed assemblage. It was my estimation that two meetings could be held by small groups of not over a hundred without any involvement. Realizing

that we were secure in our legal rights, I proceeded to go ahead. I arrived at the park at a quarter or ten minutes to two, I saw a group of police officers standing there. I went — asked which officer was in charge and they indicated an officer whom I now know to be Chief Walker. He stepped forth from the group, I told him that I was a duly ordained minister of the gospel and represented the Watchtower Society, and that my purpose there was to give a Bible lecture. He explained that he had orders that, if I went ahead, he was to arrest me. I asked him if they were based on any ordinance or any law that I would be disobeying or violating, and he said that his orders were that there was to be no meeting. I talked to him and [fol. 231] told him that we were within our legal and constitutional rights. He said he understood what was going on, and I also understood. We went ahead,—I walked to a certain part of the park in a grove of trees and began talking there. I began by informing the people standing or sitting around there that I was beginning a lecture. They congregated around me and I explained to them what was the subject of this lecture,—"Palestine in Prophecy," and of the several things that were common to that particular subject——

Mr. McNabb: I object to this, as it has nothing whatever to do with the issue in this case.

The Court: I see no occasion for great particularity in this matter. You asked him a question as to what happened there, and this part of his answer is certainly not responsive to the question; and, within reasonable limits, I see no objection to his answering in his own way; but we do not want a lecture here.

Mr. Covington: I propose to show——

The Court: The testimony in this case is that this [fol. 232] witness had hardly gotten started in his talk.

Mr. Covington: It was the other man, your Honor. This man talked for about fifteen minutes, according to the testimony.

The Court: The objection will be overruled. Within reasonable limits I am satisfied for the witness to make a statement, but not for him to plunge into a Bible lecture, as he is a witness in a criminal case now.

Q. What was the subject of your lecture?
A. Palestine in Prophecy.

Q. About how long had you talked before you were stopped by the Chief of Police?

A. Several minutes,—about ten minutes perhaps. I do not know the exact time.

Q. Up to the time that you were stopped, tell us the substance of the talk that you had made to your audience?

Mr. McNabb: I object——

The Court: Objection sustained.

Note: After Mr. Covington made an offer of what he [fol. 233] proposed to prove in answer to this question, the Court ruled as follows:

The Court: I will overrule the objection, and permit this witness to testify as to the substance of his talk, as far as he got, but not in great detail.

A. I will tell what happened up until the time that I was stopped talking. As I said before, I explained to or told my audience that the subject of my lecture was Palestine in Prophecy. I told that this was the subject that was up for discussion and that there were several points to keep in mind as the lecture proceeded,—first, that the liberated jews returning to Palestine were not fulfilling the Bible prophecy,—that this community as detailed in the Bible was to be a land of Christians working as Christians. I said that one of the things that I wanted to explain was the return of these present day jews to Palestine, whereas the jews who were to return to Palestine were jews who were Christians, and not antipathetical jews. The land of Palestine——

[fol. 234] Q. Now, Mr. Mienotko, after you had started to talk, did any of your listeners in the audience, which was around the park, make any threatening remarks?

A. No sir.

Q. Did you see any unrest or violations of the law?

A. No sir,—not to my knowledge.

Q. Up to the time that you were arrested, had anything disorderly been said or done by your audience?

A. Definitely not.

Q. What took place from the time that the officer came up to you until you were taken down to the City Courtroom and released,—you do not have to go into any great detail?

A. Officer Walker approached me and put his hand on my shoulder and placed me under arrest for disorderly

conduct, and I did not know that he was or not. Another officer escorted me to the police car there, and I went to the magistrate's office in Havre de Grace. There I asked for a copy of the law or the ordinance that I had violated, but none was given to me. I could not quite understand [fol. 235] that, and I asked if I might use the telephone, and they allowed me to do that at that time.

The Court: And you gave bail and was released?

The Witness: Yes sir,—several hours later. It was difficult——.

Q. You had some trouble in getting your release?

A. Yes sir.

Q. How long were you in custody?

A. I would say from about ten minutes past two, until six or seven in the evening, if I remember correctly.

Q. Did you come to Havre de Grace to create trouble and commotion?

A. Definitely not. My purpose in coming there was to preach God's Will, and inform the people concerned of the Bible truths. I came there to give a Bible lecture about God's Kingdom, and about the life everlasting that was to be.

Mr. Covington: That is all.

The cross-examination.

By Mr. McNabb:

Q. Had you ever been in Harford County before?

[fol. 236] A. No sir.

Q. You have said that you have spoken in different states,—have you ever spoken at any point after an officer had asked you not to proceed?

A. No sir,—this is the first time that I was ever stopped.

Q. You say that you were in custody from about ten minutes past two,—that was about the time that Chief Walker came up to you, placed his hand on your shoulder and told you that you were under arrest?

A. Yes sir,—it was approximately ten minutes past two or a quarter past two,—it was within five or ten minutes after I started to talk.

Q. And it was from then until six or seven o'clock before you could arrange for bail?

A. That's right.

Q. You were not put in a cell, were you?

A. I was.

Q. For how long?

A. I was in the Havre de Grace jail one hour, and then [fol. 237] I was brought to Bel Air.

Q. Then you came to the Bel Air jail?

A. Yes sir.

Q. And your bail appeared here and you got out of the Bel Air jail?

A. That's right.

Mr. McNabb: That is all.

Testimony of witness concluded.

Thereupon NEIL W. KELLEY, a witness of lawful age, being produced on behalf of the Defense, first being duly sworn, testified as follows:

The direct examination.

By Mr. Covington:

Q. Please state your full name, residence and occupation?

A. Neil W. Kelley, No. 208 E. Twentieth Street, Baltimore, Maryland——

Q. And you are a minister of the Watchtower Tract and Bible Society, associated with a group of people known as Jehovah's Witnesses?

A. I am.

Q. Have you served same, Mr. Kelley, in the capacity of [fol. 238] speaker in various parts of the eastern section of the country?

A. Yes sir,—in lots of places I have given bible lectures throughout this part of the country.

Q. Where?

A. In all of the New England States except Maine, and in New York, New Jersey, Pennsylvania and Maryland.

Q. In that capacity were you invited to come to Havre de Grace, Maryland, and address an assemblage on July 3rd, 1949?

A. I was.

Q. And you came here with the knowledge of what had transpired the week before?

A. That is correct, sir.

Q. Did you come here to start any trouble,—why did you come to Havre de Grace?

A. I came to Havre de Grace on an invitation from Jehovah's Witnesses, knowing their constitutional and legal rights and knowing of the trouble the week before, I thought that that was a misunderstanding that would be cleared up and that the talk would be allowed to go on.

[fol. 239] Q. You got in town, learned what had transpired and hoped that you would be able to give your talk to an audience there?

Mr. McNabb: We object——

The Court: Objection overruled.

A. I arrived in Havre de Grace at approximately a quarter to two; and, at the park, I found several hundred people,—possibly two hundred were there at that time. After that, Officer Walker came over to where the Jehovah's Witnesses were and asked who was Neil Kelley, and I stepped forth. He spoke to me and told me that he had orders to arrest whoever gave the talk that afternoon. I told him that I understood what his orders were, that I felt that I had a constitutional right to give the talk; and, therefore, he should respect that right and protect us. He said, "I don't know about that,—I am only here by orders, but I won't say from whom. I know that quite a few bonds were sold at gatherings in the town and you people are not selling [fol. 240] anything." I told him that he should guarantee us protection under the constitution. He told me that he would do the best that he could but that the State Police were unable to furnish as many officers as they did the past Sunday because the following day was July 4th was a holiday, and that they would need all their officers. I asked for permission from Chief Walker that, if he did arrest me, to invite the people of another locality—Richter's trailer camp. After I talked with him, he said that he would give me this permission. I took my place before the audience at two o'clock, and told them that my subject was "The Two Great Commandments of Life". I told them about Jesus' words and about Matthew——

Mr. McNabb: Was this at the park?

The Witness: Yes sir,—just before I was arrested.

Q. Go ahead?

A. I told them that most of our life was lived together and that the greatest command was "Love thy neighbor" and it was at this point that Officer Walker placed me under [fol. 241] arrest, but I was allowed to make an announcement that the talk would be given elsewhere. The Officer Himes, who was driving the police car, took me to the station-house and the officer had a warrant sworn out,—Officer Walker, and then bond was furnished.

Q. Was anything said upon that occasion, or in your presence, either by you or the audience that was disorderly?

A. No sir,—nothing.

Q. Was there any loud and boisterous talk on your part, or on the part of the audience, or anything that was disorderly?

A. Nothing, sir.

Q. It was a peaceful assembly?

A. A very peaceful assembly.

Mr. Covington: That is all.

The cross-examination.

By Mr. McNabb:

Q. You say that there were about two hundred people present when you arrived there?

A. That's correct.

[fol. 242] Q. You were not treated in any discourteous manner, . . . except you were placed under arrest,—did the officer say anything offensive to you?

A. No sir.

Q. You did make a talk at the trailer camp, did you not?

A. I did not,—I was taken away.

Q. I understood you to say that you later went to the trailer camp?

A. No sir,—I did not say that.

Q. But you did make the announcement that the talk would be continued elsewhere?

A. Yes sir, but someone else gave this talk elsewhere.

Q. I also understood you to say that you did not know about the trouble the week before?

A. I did not say that.

The Court: He said that he had heard about it, but thought it might be cleared up by the time he came up there.

Q. You had been advised that the meeting had been interrupted the week before?

[fol. 243] A. That's correct.

Q. These talks that you say that you have given in various states,—the northeastern states, New York, New Jersey, Pennsylvania, Maryland,—on bible subjects,—were you ever asked by any officers in these places to discontinue them?

A. No sir. I have given talks in public parks, the police have been present, and I thought that that was nothing unusual.

Q. Were you able to secure permits in these other places?

A. Permission was granted to avoid conflicts with any other organizations that might be using the park.

Mr. McNabb: That is all.

Testimony of Witness Concluded.

Thereupon Robert R. Lawder, who had previous- been sworn in this case, was called for further cross-examination, but he was not present in the Court Room.

Mr. Covington: At the time that this witness was ex-

[fol. 244] cused, it was stipulated that, after I had an opportunity to examine the record, I would want to cross-examine this witness further; and counsel for the State and I agreed that he would be called back.

The Court: You are absolutely right on that.

Mr. Covington: I also wanted to inquire about any city ordinance concerning the use of the city park——

The Court: So far as this record is concerned, there is no ordinance of the City of Havre de Grace in that respect, or any regulation, which requires or provides for the issuance of any permit, or any application for one. As the matter now stands, there is no written and published order of the City of Havre de Grace requiring a permit be obtained from the City Council for the use of the City Park, although the Mayor claims that the authority is vested in the City Council by the City Charter. Isn't that a fact?

Mr. McNabb: Yes, your Honor.

[fol. 245] The Court: Under our Rules of Court, on an appeal from a magistrate, arguments are limited to one-half an hour a side the Court feels that more time should be allowed, and then an application to the Court will grant additional time. As this case now stands, the arguments will be limited to one half an hour a side.

Mr. Covington: I have no disposition to ask for an extension of the time for argument myself, your Honor. However, I would like to make this motion, your Honor.

Motions to Dismiss

Now come the defendants in the above entitled and named case and separately moves for a dismissal of these prosecutions upon the ground that the prosecution has failed to offer any evidence to prove guilt, for the reason that the undisputed evidence shows that the defendant is not guilty, and for the further reason that, if the statute is construed and applied so as to allow the conviction of the defendant under the facts and circumstances of this case, then the statute is construed and applied in conflict with the First [fol. 246] and Fourteenth Amendments to the Constitution of the United States and the Declaration of Rights of Maryland; and it is an abridgement of the right of free speech, free assembly, freedom of conscience and freedom of worship of Almighty God.

The Court: That motion will be denied.

Motions for Instructed Verdict

Mr. Covington: Now comes the defendants in the above names cases a separately move the Court to direct and instruct the jury to return a verdict in favor of the defendant in each of these cases,—instruct the jury to find them not guilty for the reason that the undisputed evidence shows that the defendants are not guilty because the prosecution has wholly failed to prove any offense and because there is no evidence to guilt. If the statute is construed and applied so as to justify a conviction, then it is in conflict with the First and Fourteenth Amendments to the Constitution of the United States, and the Declaration of Rights of the State of Maryland; and it is an abridgement of the right of free speech, free assembly, freedom of con- [fol. 247] science, and freedom of worship of Almighty God.

The Court: The motion will be denied.

Thereupon the defendants submitted thirteen written requests for instructions. These were all refused by the Court and they are as follows:

IN THE CIRCUIT COURT FOR HARFORD COUNTY

Consolidated Cases

[Titles omitted]

DEFENDANTS' REQUEST INSTRUCTION NO. 1

Now come the defendants in the above consolidated cases, at the close of all of the evidence and before the argument of counsel and the charge of the Judge to the Jury, and request the Court to give to the Jury the following charge or instruction, to wit:

You are instructed that each defendant had, upon the occasion of his arrest, the constitutional right to attend [fol. 248] the assembly in the public park in Havre de Grace and to address the audience there gathered, and that the City Council and the Police of the City of Havre de Grace did not have the right to require a permit as a condition precedent to the holding of a meeting in such park or the giving of a talk by either of the defendants, or refuse a permit when requested by Jehovah's Witnesses, as appears from the evidence, and upon all the evidence, it would be your duty to acquit each of the defendants and by your verdict say "Not Guilty".

Wherefore the defendants pray that the Judge of the Court give to the Jury as a part of his charge or instructions upon the law and facts the above requested instructions or charge.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendants.

The above and foregoing requested instruction was duly and timely presented to me by the defendants and was by me (granted) (refused), to which action the defendants [fol. 249] duly object and excepted.

——— ———, Circuit Judge.

(Refused.)

DEFENDANTS' REQUESTED INSTRUCTION NO. 2

Now come the defendants in the above consolidated cases, at the close of all of the evidence and before the argument of counsel and the charge of the Judge to the Jury, and request the Court to give to the Jury the following instruction of charge, to wit:

The evidence shows in this case that the only reason for the arrest of either of the defendants was his refusal to [fol. 250] comply with the orders of the police to discontinue speaking, because the City of Havre de Grace had refused a permit. If you believe or find from the evidence or have a reasonable doubt thereof that the reason for the arrest of the defendants was the failure of each defendant to have a permit from the City Council, or speaking without a permit from the City Council, then it would be your duty to acquit each of the defendants of the offence of disorderly conduct and by your verdict say "Not Guilty".

Wherefore the defendants pray that the Judge of the Court give to the jury as a part of his charge or instructions upon law and facts the above requested instruction or charge.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendants.

The above and foregoing requested instruction was duly and timely presented to me by the defendants and was by me (granted) (refused), to which action the defendants duly objected and excepted.

——, Circuit Judge.

(Refused.)

[fol. 251] DEFENDANTS' REQUESTED INSTRUCTION NO. 3.

Now come the defendants in the above entitled cases, at the close of all of the evidence and before the argument of counsel and the charge of the Judge to the Jury, and request the Court to give to the Jury the following instruction or charge, to wit:

The Constitution of the United States and the Constitution of Maryland guarantee freedom of speech, assembly and worship against abridgment of all kinds. If you find or believe or have a reasonable doubt thereof that each of

the defendants was exercising his right of freedom of speech, assembly and worship upon the occasion of his [fol. 252] arrest, you will acquit each defendant and by your verdict say "Not Guilty".

Wherefore the defendants pray that the Judge of the Court give to the jury as a part of his charge or instructions upon the law and the facts the above requested instruction or charge.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendants.

The above and foregoing instruction requested was duly and timely presented to me by the defendants and was by me (granted) (refused), to which action the defendants duly objected and excepted.

——— ———, Circuit Judge.

(Refused.)

[fol. 253] Defendants' Requested Instruction No. 4

Now come the defendants in the above consolidated case, at the close of all of the evidence and before the argument of counsel and the charge of the Judge to the Jury, and request the Court to give to the Jury the following instruction or charge, to wit:

You are instructed that the undisputed evidence shows that each defendant is not guilty of the offense of disorderly conduct as charged and it will be your duty to acquit each defendant and by your verdict say "Not Guilty".

[fol. 254] Wherefore the defendants pray that the Judge of the Court give to the jury as a part of his charge or instructions upon the law and facts the above requested instruction or charge.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendants.

The above and foregoing requested instruction was duly and timely present- to me by the defendants and was by me (granted) (refused), to which action the defendants duly objected and excepted.

——— ———, Circuit Judge.

(Refused.)

[fol. 255] DEFENDANTS' REQUESTED INSTRUCTION No. 5

Now come the defendants in the above consolidated cases, at the close of all of the evidence and before the argument of counsel and the charge of the Judge to the Jury, and request the Court to give to the Jury the following instruction or charge, to wit:

You are instructed that the City of Havre de Grace is forbidden by the Constitution of the United States and the Constitution of Maryland from having or attempting to enforce any law, regulation, rule or ordinance requiring a permit before a person can speak to an assembly in the [fol. 256] public park or holding a meeting there and can not lawfully prosecute such person for speaking or holding a meeting in such park without a permit from the City Council or the Police of Havre de Grace, and the law does not require anyone to obtain a permit before speaking or holding a public meeting in such park, and the Constitution forbids the conviction of one for speaking to an audience or holding an assembly in a park without a permit from the City.

Wherefore the defendants pray that the Judge of the Court give to the Jury as a part of his charge or instructions upon the law and facts the above requested instruction or charge.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendants.

The above and foregoing requested instruction was duly and timely presented to me by the defendants and was by me (granted) (refused), to which action the defendants duly objected and excepted.

——, Circuit Judge.

(Refused.)

[fol. 257] DEFENDANTS' REQUESTED INSTRUCTION No. 6

Now come the defendants in the above consolidated cases, at the close of all of the evidence and before the argument of counsel and the charge of the Judge to the Jury, and request the Court to give the Jury the following instruction or charge, to wit:

The right to make a speech to an audience or hold a meeting is a public park is not confined to citizens or tax-

payers but extends to every person, whether residing inside or outside Havre de Grace. From time out of mind parks [fol. 258] have been used for such purposes. Parks are devoted not only to recreation and the common use of the public but also have been used as places of assembly where people may come to discuss any question in which they are concerned. Any person may speak in such public parks on any subject that he desires to speak upon, which right may be exercised by any person subject only to the right of the City, by proper law and ordinance, to regulate as to time and thus avoid conflict of meetings. The City of Havre de Grace does not have the right to withhold the use of the park on the grounds that the message delivered or the assembly is for the purpose of considering dissentient, unpopular or unorthodox views.

Wherefore the defendants pray that the Judge of the Court give to the Jury as a part of his charge or instructions upon the law and facts the above requested instruction or charge.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendants.

[fol. 259] The above and foregoing requested instruction was duly and timely presented to me by the defendants and was by me (granted) (refused), to which action the defendants duly objected and excepted.

(Refused)

DEFENDANTS' REQUESTED INSTRUCTION No. 7

Now come the Defendants in the above consolidated cases, at the close of all of the evidence and before the argument of counsel and the charge of the Judge to the Jury, and request the Court to give to the Jury the following instruction or charge, to wit:

[fol. 260] "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembling, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens". (Hague v. C. I. O., 307 U. S. 496)

Wherefore the defendants pray that the Judge of the Court give to the jury as a part of his charge or instructions upon the law and facts the above requested instruction or charge.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendants.

The above and foregoing requested instruction was duly and timely presented to me by the defendants and was by me (granted) (refused), to which actions the defendants duly objected and excepted.

—— ——, Circuit Judge.

(Refused)

[fol. 261] DEFENDANTS' REQUESTED INSTRUCTION No. 8

Now come the defendants in the above consolidated cases, at the close of all of the evidence and before the argument of counsel and the charge of the Judge to the Jury, and request the Court to give to the Jury the following instruction or charge, to wit:

"This court has characterized the freedom of speech and that of the press as fundemental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the founda-[fol. 262] tion of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restrictions of enjoyment of these liberties". (Schneider v. New Jersey, 308 U. S., 147)

Wherefore the defendants pray that the Judge of the Court give to the jury as a part of his charge or instructions upon the law and facts the above requested instruction or charge.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendants.

The above and foregoing requested instruction was duly and timely presented to me by the defendants and was by me (granted) (refused), to which action the defendants duly objected and excepted.

—— ——, Circuit Judge.

(Refused)

[fol. 263] DEFENDANTS' REQUESTED INSTRUCTION No. 9

Now come the defendants in the above concolidated cases, at the close of all of the evidence and before the argument of counsel and the charge of the Judge to the Jury, and request the Court to give to the Jury the following instructions or charge, to wit:

You are instructed that the constitutional right to use a public park to give a talk or to hold an assembly includes the right of free discussion and even free debate or the exchange of ideas that promote diversity of opinion and [fol. 264] different programs as a means for the relief of the people, and this freedom to promote differences by discussion or through assembly in public parks is one of the chief distinctions that sets this country apart from the totalitarian nations. Free speech under the Constitution has the function of inviting dispute. Even when free speech induces a condition of unrest, creates dissatisfaction with conditions as they are and stirs people even to anger, the constitutional right remains with the speaker. Speech is often provocative and challenging. The Constitution guarantees speech that strikes at prejudices or even creates prejudices. It guarantees speech and assembly that may have unsettling effects upon orthodox ideas. By it assembly is protected against censorship through the requirement of a permit or license as a condition precedent to the exercise of the right. There is no room under the Constitution for a more restrictive view of freedom of speech and assembly.

Wherefore the defendants pray that the Judge of the Court give to the Jury as a part of his charge or instruc- [fol. 265] tions upon the law and facts the above requested instruction or charge.

Harry Yaffe, Hayden E. Covington, Attorneys for Defendants.

The above and foregoing requested instruction was duly and timely presented to me by the defendants and was by me (granted) (refused), to which action the defendants duly objected and excepted.

——— ———, Circuit Judge.

(Refused)

DEFENDANTS' REQUESTED INSTRUCTION No. 10.

[fol. 266] Now comes the defendants in the above consolidated cases, at the close of all of the evidence and before the argument of counsel and the charge of the Judge to the Jury, and request the Court to give to the Jury the following instruction or charge, to wit:

The evidence in this case shows that the City Council and the Police of Havre de Grace objected to the holding of a public meeting and the giving of public talks in the park by Jehovah's witnesses, on the grounds that Jehovah's witnesses constituted the organization whose members refuse to salute the flag, attack the doctrines of the orthodox churches and have conscientious scruples against rendering military services in the armed forces. You are instructed that none of these grounds is valid basis for refusing a permit to use the park or arrest of one of Jehovah's witnesses speaking in the park to an assembly gathered therein. The Constitution of the United States does not require the salute to the American flag by any person. The Constitution of the United States and the Constitution of Maryland specifically guarantee to any person, including [fol. 267] one of Jehovah's witnesses, the absolute right to refuse to salute the American flag. Moreover the Constitution of the United States guarantees freedom of religion, which includes the right to preach dissentient doctrines that attack orthodox views. Freedom of speech and freedom of worship preclude the City of Havre de Grace from denying a permit to use the park or arresting one for speaking in the public park because of his dissentient views or attacking the doctrines of the orthodox churches. The Selective Training and Service Act of 1940 and the Selective Training and Service Act of 1948 guarantee the right of a person to have conscientious scruples against the performance of military service. But, even if the law did not contain such exemption and even though the Constitution does not guarantee freedom from military service based on conscientious scruples, the mere fact that one may refuse to do military service, may refuse to salute the flag, or may refuse to conform to orthodox religious views is no basis in law for refusing a permit to meet [fol. 268] in the public park or to speak therein, and would not justify the Police in arresting one who held such views for holding a meeting or making a speech in a public park.

Wherefore the defendants pray that the Judge of the Court give to the jury as a part of his charge or instructions upon the law and facts the above requested instruction or charge.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendants.

The above and foregoing requested instruction was duly and timely presented to me by the defendants and was by me (granted) (refused), to which action the defendants duly objected and excepted.

—— ——, Circuit Judge.

(Refused)

[fol. 269] DEFENDANTS' REQUESTED INSTRUCTION No. 11

Now come the defendants in the above consolidated cases, at the close of all of the evidence and before the argument of counsel and the charge of the Judge to the Jury, and request the Court to give to the Jury the following instruction or charge, to wit:

"Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. [fol. 270] Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever increasing severity. As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find them- [fol. 271] selves exterminating dissenters. Compulsory

unification of opinion achieves only the unanimity of the graveyard.

"It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up a government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority".

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us". (West Virginia State Board of Education v. Barnette, [fol. 272] 319 U. S. 624).

Wherefore the defendants pray that the Judge of the Court give to the jury as a part of his charge or instructions upon the law and facts the above requested instruction or charge.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendants.

The above and foregoing requested instruction was duly and timely present- to me by the defendants and was by me (granted) (refused), to which action the defendants duly objected and excepted.

—— ——, Circuit Judge.

(Refused.)

[fol. 273] Defendants' Requested Instruction No. 12

Now come the defendants in the above consolidated case, at the close of all of the evidence and before the argument of Counsel and the charge of the Judge to the Jury, and request the Court to give to the Jury the following instruction or charge, to wit:

"In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of

view, the pleader, as we know, at times, resorts to exaggeration, to villification of men who have been or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of democracy.

"The essential characteristics of these liberties is, that under their shield many types of life, character, [fol. 274] opinion and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds". (Cantwell v. Connecticut, 310 U. S. 296).

Wherefore the defendants pray that the Judge of the Court give to the Jury as a part of his charge or instructions upon the law and facts the above requested instruction or charge.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendants.

The above and foregoing requested instruction was duly and timely presented to me by the defendants and was by me (granted) (refused), to which action the defendants duly objected and excepted.

——— ———, Circuit Judge.

(Refused.)

[fol. 275] Defendants' Requested Instruction No. 13

Now come the defendants in the above consolidated cases, at the close of all of the evidence and before the argument of counsel and the charge of the Judge to the Jury, and request the Court to give to the Jury the following instruction of charge, to wit:

The City of Havre de Grace contends that it has absolute power over its parks because it is the owner of the public park, having acquired the park by deed, which gives it fee simple title. Ownership of the park by the City does [fol. 276] not confer on the City of Havre de Grace the same right of control as is enjoyed by the owner of private property. In this connection you are instructed that the Con-

stitution of the United States, as construed by the Supreme Court of the United States, lays down the proposition that wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembling, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens.

Wherefore the defendants pray that the Judge of the Court give to the jury as a part of his charge or instructions upon the law and facts the above requested instruction or charge.

Harry Yaffe, Hayden C. Covington, Attorneys for Defendants.

The above and foregoing requested instruction was duly [fol. 277] and timely presented to me by the defendants and was by me (granted) (refused), to which action the defendants duly objected and excepted.

——, Circuit Judge.

(Refused.)

RECITAL AS TO CLOSING ARGUMENT ON BEHALF OF THE STATE

During his closing argument to the jury, Mr. McNabb, State's Attorney, stated to the jury that the defendants in these cases were not without legal redress when the City Council of Havre de Grace refused them a permit to use the City park on the dates requested. He said that they could have applied to the Court for a mandamus or an injunction and thus secured their right to use the park, but they did not do this.

OBJECTION OF DEFENDANTS

Mr. Covington: Counsel, in his argument, has informed the jury that the defendants did not proceed in an orderly manner,—that they had a right to apply to the Court for an injunction, or appeal to the Court for redress by some civil action, and thus test if the City Council was arbitrary and capricious in refusing to issue them a permit as requested. [fol. 278] This argument was duly and timely objected to by counsel for the defendants on the ground that it was contrary to the law, because, in the language of the Court, the Supreme Court of the United States, in Cantwell v. Con-

necticut, 310 U. S. 296, where it was held that it was not necessary for the defendants, in the exercise of their constitutional rights, to appeal to a civil court to get relief, but they can go ahead and exercise their rights; and, if they are prosecuted, they can argue that in the civil court, and make it a defense to any indictment or prosecution.

I attempted to make that objection at this time, but the Court ruled that it could not be made, and I take an exception to that ruling by the Court.

The Court: Objection by counsel for the defendants came during the closing argument of the State's Attorney, at which time, in the view of the Court, the State's Attorney's argument was well within the established rule of this Court in respect to such arguments. The objection of counsel is untimely and improper, and will be overruled.

[fol. 279] Mr. Covington: As stated before, I will note an exception to this ruling, your Honor.

The Court: While these cases have been tried together, they are separate cases. They were consolidated for convenience, and it will be necessary for you to return a verdict against each defendant.

[fol. 280] IN COURT OF APPEALS OF MARYLAND.

No. 1, Misc., October Term, 1949

PETITION FOR CERTIORARI

DANIEL NIEMOTKO

vs.

STATE OF MARYLAND

NEIL W. KELLEY

vs.

STATE OF MARYLAND

Before Marbury, C. J., and Delaplaine, Collins, Grason, Henderson and Markell, JJ.

OPINION—BY MARBURY, C. J.—Filed January 11, 1950

Separate petitions have been filed in this Court for writs of certiorari to review convictions and judgments of the

Circuit Court for Harford County in two cases appealed from trial magistrates' decisions. One case is against Daniel Niemotko, and the other against Neil W. Kelley. The facts are identical in each case. Each petitioner was charged with the same offense. Each was convicted of disorderly conduct before the trial magistrate and fined $50 and costs. Each appealed to the Circuit Court, and was tried before a jury which found him guilty. A fine of $50 and costs was imposed upon each of the petitioners by the Court, and it is these judgments we are asked to review. The petitions are filed under the provisions of Article 5, Section 104 which authorizes such a petition in any case, civil or criminal, in which a final judgment has been rendered by the Circuit Court of any county or by one of the courts of Baltimore City upon appeal from a Justice of the Peace if it shall be made to appear to us that a review is necessary "to secure uniformity of decision [fol. 281] where the same statute has been construed differently by the courts of two or more circuits or that there are other special circumstances rendering it desirable and in the public interest that the case should be reviewed." This section has been used in State vs. Depew, 175 Md. 274, and Darling Shops vs. Baltimore Center Corp., — Md. —, 60 At. 2d, 669. In both of these cases the question raised was an erroneous construction of law, and a representation that conflicting decisions had been made throughout the state on the questions involved. The latter allegation is not made in the petitions before us.

The facts stated in the petitions are that the petitioners are ordained ministers of the Gospel and members of the sect known as Jehovah's witnesses. They were invited by a congregation of that sect in Havre de Grace, Maryland, to give a public talk upon a Bible subject, Niemotko, on June 26, 1949, and Kelley on July 3, 1949. Niemotko had been informed that the City Council of Havre de Grace had refused to allow Jehovah's witnesses to hold the assembly in the Park. When he arrived there, a number of policemen were present, and the Chief of Police advised him that if he attempted to talk he would be arrested. He did start to talk, was allowed to continue for ten or fifteen minutes, and then was arrested. The charge against him was laid under the disorderly conduct statute, Section 131 of Article 127.

Kelley appeared on the following Sunday with knowledge of the arrest of Niemotko, and was likewise informed by the Chief of Police at the Park that if he attempted to talk he would be arrested. Previous to these meetings the local Congregation of Jehovah's witnesses had requested the City Council for permission to use the park for four consecutive Sundays. After a hearing before the Council on June 20, 1949, this application was denied and Jehovah's witnesses thereupon delivered the Council a written letter stating that they would use the park, because, in their opinion, any prohibition against such use was in violation of the decisions of the Supreme Court of the United States.

The questions which the petitioners wish us to review are stated as follows:

[fol. 282] (1) Does the making of a speech to a peaceable public assembly in a public park without a permit from the City Council of Havre de Grace and contrary to the order of the Chief of Police constitute disorderly conduct in violation of Section 131, Article 27 of the Code of Public General Laws of Maryland?

(2) Does the undisputed evidence show that there was no violation of Section 131, Article 27 of the Code of Public General Laws of Maryland?

(3) Do the verdict and judgment rendered against the petitioner in the the court below abridge the petitioner of his right to freedom of speech, freedom of assembly, freedom of worship and freedom of conscience, contrary to the First and Fourteenth Amendments to the United States Constitution and the Declaration of Rights of Maryland?

(4) Did the trial court commit egregious reversible error in denying petitioner the right to examine the prospective jurors on *voir dire* as to prejudice and knowledge of the case so as to intelligently exercise his peremptory challenge and to ascertain the existence of grounds warranting challenges for cause?

(5) Did the trial court commit egregious reversible error in excluding evidence and testimony offered by the petitioner and by unduly limiting petitioner's right to cross-examine the witnesses for the prosecution?

(6) Did the trial court commit egregious reversible error in allowing the prosecutor to argue erroneous state-

ments of law to the jury and in denying counsel for the petitioner the right to make and to complete his objections to such arguments?

(7) Did the trial court commit reversible error in overruling the motion for dismissal of the prosecution and for a judgment of acquittal?

(8) Did the trial court commit reversible error in overruling the motion for directed verdict of "not guilty"?

(9) Did the trial court commit reversible error in overruling the motion for judgment notwithstanding the verdict?

[fol. 283] (10) Did the trial court commit reversible error in overruling the motion for new trial?

(11) Did the trial court commit egregious and reversible error in rendering a judgment of conviction upon the verdict of the Jury?

These questions require us to review the evidence in a case heard before a jury, and also to review the conduct of the trial court in refusing motions for directed verdicts of not guilty, motions directing verdicts of acquittal, motions for judgments N. O. V., in overruling motions for a new trial, and in entering judgments upon the verdicts. It has, of course, been many times decided by this Court that since by Article 15, Section 5 of the Constitution of this State, the jury are the judges of law as well as of fact in the trial of all criminal cases, the courts cannot review the evidence or instruct the jury on the law, except in an advisory capacity. Wheeler vs. State, 42 Md. 569, Broll vs. State, 45 Md. 359, Abbott vs. State, 188 Md. 310, Herring vs. State, 189 Md. 172. If these petitions were granted we would, therefore, be unable to determine whether the facts proven showed a violation of the disorderly conduct statute, and we cannot find from the petition that the application of the statute to the facts by the jury was in violation of the decisions of the Supreme Court. In this State the *nisi prius* court (in this case the Circuit Court for Harford County) is the final judge of the sufficiency of the evidence in any criminal case by its action upon a motion for a new trial. This motion has been made and denied, and it is not reviewable here. Snyder vs. Cearfoss, 186 Md. 360, Winkler vs. State, No. 25, October Term, 1949, — Md. —.

In this State we have no practice of motions for a judgment of acquittal, motions for a directed verdict of not guilty, or motions for judgment N. O. V. in a criminal case. All the other points raised involve matters affecting the conduct of the trial, which are largely in the discretion of the trial court. They are not matters of public interest which make it desirable for us to review the cases under [fol. 284] Article 5, Sec. 104, and we do not think they are the type of cases which that section is intended to cover.

For these reasons, both petitions will be denied.

IN COURT OF APPEALS OF MARYLAND

No. 1, Misc., October Term, 1949

PETITION FOR CERTIORARI

DANIEL NIEMOTKO

vs.

STATE OF MARYLAND

NEIL W. KELLEY

vs.

STATE OF MARYLAND

Before Marbury, C. J., and Delaplaine, Collins, Grason, Henderson and Markell, JJ.

CONCURRING MEMORANDUM BY MARKELL, J.—Filed January 11, 1950

MARKELL, J., concurring in the result:

If the facts alledged in the petitions are supported by the records (which are not before us), petitioners' rights under the Constitution of the United States of freedom of worship, freedom of speech and freedom of assembly have been wantonly violated and completely flouted by the municipality of Havre de Grace and by the circuit court. Lovell v. Griffin, 303 U. S. 444; Hague v. C. I. O., 307 U. S. 496; Schneider v. State (Town of Irvington), 308 U. S. 147, and many subsequent cases. Rectification of such out-

rages would be the most compelling "special circumstances rendering it desirable and in the public interest that the cases should be reviewed."

[fol. 285] However, so long as this court adheres to its position that Maryland criminal procedure—or lack of procedure—is supreme over the Constitution of the United States (Winkler v. State, — Md. —, 69 A. 2d 674), review of these cases by this court would result not in rectification of outrages, but in frustration. Petitioners would still be forced to go to the Supreme Court for enforcement of their constitutional rights which this court refuses to enforce when the facts have been covered by a false label in manner sanctified by Maryland practice. As petitioners have no right of appeal to this court in these cases, denial of discretionary review by certiorari will leave them free to go direct from the Circuit Court to the Supreme Court by appeal or application for certiorari, thus saving them the delay and expense of futile review in this court. Solely to expedite petitioners' quest for justice and vindication of their constitutional rights I concur in the denial of certiorari in these cases.

[fol. 286] IN THE SUPREME COURT OF THE UNITED STATES

No. 599

STATEMENT OF POINTS RELIED ON—Filed February 11, 1950

Comes now appellant, Daniel Niemotko, in the above entitled cause and states that the points upon which he intends to rely in the Supreme Court of the United States in this cause are as follows:

(1) The statute, insofar as it has been construed and applied by this court and the court below, constitutes an unreasonable abridgment of the rights of the appellant to freedom of speech, assembly and worship, contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The use to which the public park has been put by the appellant is similar to that of orthodox worshipers and preachers in church buildings where people worship

and thus the constitutional limitations applicable to statutes insofar as they affect worship by people in buildings likewise apply to the use of the public park by appellant in connection with preaching in this case.

(3) The statute is unconstitutional insofar as it has been construed and applied by this court and the court below because it discriminates arbitrarily against Jehovah's witnesses and in favor of others in respect to the use of the public park, incidental to providing them with spiritual instruction, guidance and training through public preaching in the park.

(4) The statute in question is unconstitutional insofar [fol. 287] as it has been construed and applied by this court and the court below because there is no reasonable relation between the evil aimed at and the means employed to reach it under the circumstances of this case.

(5) As it has been construed and applied by this court and the court below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, assembly and worship, the statute is presumptively unconstitutional, and which presumption the State has failed to overcome by a showing that the enforcement of the statute is reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of a state to regulate use of a public park.

(6) The statute is unconstitutional as construed and applied by this court and the court below in that it is not a regulatory law as to the time, place and manner of use of the park, but is prohibitory and provides for censorship, conferring arbitrary discretionary powers upon the Chief of Police, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

(7) The statute supporting the prosecution has been construed and applied by this court so as to allow a conviction of appellant under the facts and circumstances of this cause, because of his exercise of his civil rights in the public park, so as to unlawfully abridge and deny him his right of freedom of conscience, freedom of speech, freedom of assembly and freedom to worship Almighty God,

contrary to the First and Fourteenth Amendments to the United States Constitution.

For the above reasons the judgment of the Circuit Court for Harford County, Maryland, should be reversed.

Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York, Attorney for Appellant.

[fol. 287a] [File endorsement omitted.]

[fol. 288] IN THE SUPREME COURT OF THE UNITED STATES

No. 600

STATEMENT OF POINTS RELIED ON—Filed February 11, 1950

Comes now appellant, Neil W. Kelley, in the above entitled cause and states that the points upon which he intends to rely in the Supreme Court of the United States in this cause are as follows:

(1) The statute, insofar as it has been construed and applied by this court and the court below, constitutes an unreasonable abridgement of the rights of the appellant to freedom of speech, assembly and worship, contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The use to which the public park has been put by the appellant is similar to that of orthodox worshipers and preachers in church buildings where people worship and thus the constitutional limitations applicable to statutes insofar as they affect worship by people in buildings likelise apply to the use of the public park by appellant in connection with preaching in this case.

(3) The statute is unconstitutional insofar as it has been construed and applied by this court and the court below because it discriminates arbitrarily against Jehovah's witnesses and in favor of others in respect to the use of the public park, incidental to providing them with spiritual instruction, guidance and training through public preaching in the park.

(4) The statute in question is unconstitutional insofar [fol. 289] as it has been construed and applied by this

court and the court below because there is no reasonable relation between the evil aimed at and the means employed to reach it under the circumstances of this case.

(5) As it has been construed and applied by this court and the court below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, assembly and worship, the statute is presumptively unconstitutional, and which presumption the State has failed to overcome by a showing that the enforcement of the statute is reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of a state to regulate use of a public park.

(6) The statute is unconstitutional as construed and applied by this court and the court below in that it is not a regulatory law as to the time, place and manner of use of the park, but is prohibitory and provides for censorship, conferring arbitrary discretionary powers upon the Chief of Police, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

(7) The statute supporting the prosecution has been construed and applied by this court so as to allow a conviction of appellant under the facts and circumstances of this cause, because of his exercise of his civil rights in the public park, so as to unlawfully abridge and deny him his right of freedom of conscience, freedom of speech, freedom of assembly and freedom to worship Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution.

For the above reasons the judgment of the Circuit Court for Harford County, Maryland, should be reversed.

Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York, Attorney for Appellant.

[fol. 289a] [File endorsement omitted.]

[fol. 290] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

Nos. 599-600

MOTION TO CONSOLIDATE CASES AND TO OMIT PRINTING OF DUPLICATE TRANSCRIPT OF THE TESTIMONY—Filed February 11, 1950

May it Please the Court:

Now comes Hayden C. Covington, counsel for the appellants in the above entitled causes and moves the Court for an order consolidating the cases and directing the Clerk to omit the printing of the transcript of the testimony in the case of Neil W. Kelley v. State of Maryland. As grounds for this motion he shows the Court as follows:

These two cases were consolidated for trial in the Circuit Court for Harford County, Maryland. The testimony in each case is identical. Two meetings on separate Sundays were held by Jehovah's witnesses in the public park of Havre de Grace, Maryland. On the first Sunday Daniel Niemotko addressed the assembly. He was arrested and charged with disorderly conduct because he defied the [fol. 291] order of the Chief of Police. Neil W. Kelley addressed the assembly in the park on the second Sunday. He was charged with the same offense. The circumstances surrounding the use of the park and the delivery of the speeches are the same.

When the transcript of the record was prepared the testimony was ordered from the court stenographer in duplicate. The original was included in the transcript of the Niemotko case. A carbon copy was included in the transcript of the Kelley case. The record as filed in each of these cases contains a stenographer's transcript which is identical. It would be a waste of money and add to the burden of the Court to print the transcript of the testimony in each of these cases. The Court would be benefited in the consideration of these cases if an order were made directing the Clerk to eliminate from the printed transcript of the record in these two cases the carbon copy of the transcript of the testimony appearing in the case of Neil W. Kelley v. State of Maryland.

Even though the cases are not consolidated they will undoubtedly be argued, submitted and considered together,

so that the references to the testimony appearing in the transcript of the record in the Niemotko case will be sufficient to enable the Court to make a proper determination of each of these cases. The Clerk's costs for the printing of the testimony in each case will approximate $300 or $400. It will serve no useful purpose to require the payment of printing costs for a duplicate transcript of the record. Under the circumstances of these cases as above stated, the printing of the transcript of the testimony in one case should be sufficient.

Wherefore the appellants pray the court to enter an order consolidating each of these cases, directing the Clerk [fol. 292] to file them as one case and ordering the Clerk to cause to be printed one transcript of the testimony including all of the papers in both cases in the printed record except the duplicate transcript of the testimony in the Kelley case. In event the Court does not consolidate the cases, then the Court is requested, in the alternative, to enter an order directing the Clerk to eliminate the printing of the transcript of the testimony in the Kelley case.

Dated February 6, 1950.

Respectfully submitted, Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York, Counsel for Appellants.

[fol. 292a] [File endorsement omitted.]

[fol. 293] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1949

Nos. 599 & 600

ORDER NOTING PROBABLE JURISDICTION AND GRANTING MOTION TO CONSOLIDATE—March 13, 1950

The statements of jurisdiction in these cases having been submitted and considered by the Court, probable jurisdiction is noted. The motion to consolidate is granted and the cases are ordered consolidated and transferred to the summary docket.

Mr. Justice Douglas took no part in the consideration of this question.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. #1748

DANIEL NIEMOTKO

Appellant,

vs.

STATE OF MARYLAND

APPEAL FROM THE CIRCUIT COURT OF HARFORD COUNTY, STATE OF MARYLAND

STATEMENT AS TO JURISDICTION

HARRY YAFFE,
HAYDEN C. COVINGTON,
Counsel for Appellant.

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CIRCUIT COURT FOR HARFORD COUNTY,
STATE OF MARYLAND

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vs.

DANIEL NIEMOTKO,

Defendant-Appellant

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 (1) of the Supreme Court of the United States, as amended April 6, 1942, appellant files his statement disclosing the basis upon which he contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under 28 U. S. C. 1257 (2).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error. This case presents a state of facts within the jurisdiction of this court.

Legislation Drawn in Question

This case draws into question the validity of state legislation, to wit, Section 131 of Article 27 of the Code of Public General Laws of Maryland, which reads as follows:

> Every person who shall be found drunk, or acting in a disorderly manner, to the disturbance of the public peace, upon any public street or highway, in any city, town or county, in this State, or at any place of public worship or public resort or amusement in any city, town or county of this state, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not more than fifty dollars, or be confined in jail for a period of not more than Sixty days or be both fined and imprisoned in the discretion of the court. Habitual offenders may be fined not more than one hundred dollars or committed to jail for not more than six months. An habitual offender is a person who shall have been convicted under the provisions of this section five (5) times in the preceding (12) months. The trial magistrates of the respective counties of this State shall have concurrent jurisdiction over such offenses with the circuit court for their respective counties; and police magistrates selected to sit at the respective station houses in the city of Baltimore shall have concurrent jurisdiction over such offense with the criminal court of Baltimore City. (Annotated Code of Maryland, Article 27, Section 131, 1943 Supplement.)

The above statute was construed and applied to the undisputed facts showing that the appellant was not guilty of any kind of disorderly conduct and that appellant was exercising the right of freedom of speech and freedom of assembly and freedom of worship, guaranteed against abridgment by the First and Fourteenth Amendments of the United States Constitution.

Constitutional Provisions Involved

The first Amendment is invoked in this case against the conviction of the appellant under the foregoing statute. The First Amendment reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment of the United States Constitution makes applicable against the states, so as to protect the appellant against the conviction in the case, the First Amendment to the United States Constitution. The pertinent parts of the Fourteenth Amendment read as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Circuit Court for Harford County the Court of Last Resort

The Circuit Court for Harford County, Maryland, was the highest court in the State of Maryland in which a decision could be had in this cause, although such court is not the highest court in the State of Maryland. The judgment of conviction by the Circuit Court for Harford County was not susceptible of further review in the state courts, and all proper steps were taken to secure further review in presenting an application for a writ of certiorari to the Court of Appeals of Maryland. It refused to exercise its discretionary power and allow a review of the con-

viction by the Court of Appeals of Maryland. See the majority and concurring opinions of that court. (Appendices A and B.)

The Circuit Court for Harford County, a trial court of original jurisdiction, rendered the judgment upon which the appeal herein is taken. Said judgment of said intermediate state court was rendered upon a trial *de novo* before a jury, which is the final judge of the law and fact, following an appeal from a magistrate's court.

The Supreme Court of the United States has held that where a judgment of a court is subject to discretionary review and such review is exhausted, the appeal may be taken directly to the Supreme Court of the United States, even though the judgment appealed from may be that of a trial court. See *Bacon* v. *Texas*, 163 U. S. 207, 215; *Sullivan* v. *Texas*, 207 U. S. 416, 422; *San Antonio & A. P. R. Co.* v. *Wagner*, 241 U. S. 476, 477; *Randall* v. *Board of Commissioners*, 261 U. S. 252; *Western Union Tel. Co.* v. *Croco*, 220 U. S. 364, 366; *Stanley* v. *Schwalby*, 162 U. S. 255, 269; *Norfolk & S. Turnpike Co.* v. *Virginia*, 225 U. S. 264, 269; *Cuyahoga Power Co.* v. *Northern Realty Co.*, 244 U. S. 300, 302, 303; *Western Union Tel. Co.* v. *Priester*, 276 U. S. 252, 258; *Pennsylvania Railroad Co.* v. *Illinois Brick Co.*, 297 U. S. 447, 453; *Mellon* v. *O'Neill*, 275 U. S. 212, 213; *Second National Bank of Cincinnati* v. *First National Bank of Okeana*, 242 U. S. 600; *Chesapeake & Ohio Ry. Co.* v. *Kuhn*, 284 U. S. 44, 45.

Timeliness

The judgment of the Circuit Court for Harford County convicting the appellant and assessing a fine was rendered and entered on November 29, 1949. (1)[1]

[1] Figures appearing in parentheses refer to pages of the Clerk's typewritten transcript of the papers filed in the Circuit Court for Harford County.

The judgment of the Court of Appeals of Maryland was rendered on the 10th day of January, 1950 and entered on the 11th day of January, 1950, whereupon the judgment of conviction made by the Circuit Court became final. This appeal is duly presented and filed within three months from the date such judgment of the Circuit Court for Harford County, Maryland, became final. This appeal is therefore timely.

Opinion

The Court of Appeals of Maryland wrote an opinion. The court did not pass on the merits but ruled that it had no jurisdiction to review the conviction. The opinion is not yet reported. It, together with the concurring opinion, is set out in the record. These opinions are also appended hereto as Appendices A and B.

The Circuit Court for Harford County wrote no opinion. The verdict and judgment both appear in the record. (1)

Nature and History of the Action

This action arose in the Magistrate's Court of Havre de Grace. (1, 2) Magistrate G. Howlett Cobourn issued a warrant for the arrest of the appellant upon the oath of Chief of Police Walter Walker, who charged appellant with disorderly conduct. (2) Trial before the Magistrate resulted in a fine of $25 and costs. (2) An appeal was duly entered to the Circuit Court of Harford County. (3) Appearance bond was made. (3) The transcript was duly filed and the case was made returnable at the November Term of the Circuit Court. (1) Upon the calling of the case for trial *de novo* appellant was arraigned and pleaded not guilty. (1)

The trial began before the judge of the court below to a jury on Monday, November 28, 1949. (1) [1] [2] The evidence was concluded on Tuesday, November 29th. (1) Motions to dismiss and for a directed verdict were duly made. (1, 3-5) [245, 246-247] Requested instructions were duly submitted by the appellant, which were denied. [247-272] The law and fact were argued by counsel to the jury. [277] The jury retired and promptly returned with the verdict of guilty. (1) Judgment was pronounced against the appellant upon the verdict whereby appellant was fined $25 and costs. (1)

The appellant promptly prepared and filed with the Court of Appeals of Maryland a written application for writ of certiorari, asking discretionary review of the conviction by the Court of Appeals pursuant to Section 104 of Article 5 of the Code of Public General Laws of Maryland (Chapter 238 of Public Laws of 1937). This application was denied on January 10, 1950 and the order entered on January 11, 1950. The opinions, holding that the court had no jurisdiction to decide whether the civil rights of appellant secured by the First and Fourteenth Amendments, had been abridged by the City of Havre de Grace and the Circuit Court, are made appendices to this statement.

How Issues Raised

The appellant pleaded not guilty. (1) This plea set in issue all of the grounds raised upon this appeal. (1) In his motion for a dismissal of the prosecution, as well as in his motion for an instructed verdict of not guilty, the appellant asserted that if he should be convicted upon the facts disclosed in the record that it would abridge his rights of

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[2] Figures appearing in brackets refer to pages of the typewritten stenographic transcript of the testimony and proceedings at the trial in the Circuit Court for Harford County.

freedom of assembly, freedom of speech, freedom of worship and freedom of conscience, contrary to the First and Fourteenth Amendments to the Constitution of the United States. (1, 3-5)

Summary of Facts

There is absolutely no question of the sufficiency of the evidence. There was no material conflict in the testimony relating to the federal questions presented here. The facts are established by the undisputed evidence adduced upon the trial to the jury in the court below. They shall now be stated.

The appellant is an ordained minister of the gospel. [227] He is associated with the Watchtower Bible and Tract Society of Brooklyn, New York, and Jehovah's witnesses. [227] He resides at 124 Columbia Heights, Brooklyn, New York. [227] He was invited by a small congregation of Jehovah's witnesses located in Havre de Grace, Maryland, to give a public talk upon a Bible subject in the public park of Havre de Grace on June 26th, 1949. [228-229] The talk began at 2:00 P.M. [92-93] Shortly before 2:00 P.M. appellant arrived in the park. [229-230] The audience was assembled at an appropriate place in the park for the holding of a public meeting. [230-231] Appellant had been informed of a refusal by the City Council to allow Jehovah's witnesses to hold the assembly in the park. [229-230] On arriving at the park he noticed a number of policemen in uniform, among whom was the Chief of Police. [230] He walked over to the Chief and attempted to convince him that the action of the City Council was unlawful and unconstitutional and that neither the City Council nor the Chief of Police had a right to forbid Jehovah's witnesses from holding the assembly or appellant from giving the public talk to the assembly. [93-94,

230-231] Appellant informed the Chief that he was going to proceed with the talk at the scheduled time. [93-94, 230-231] Chief Walker told appellant that if he attempted to give the talk he would be arrested. [93-94, 230-231]

At the scheduled time appellant stood up and began addressing the assembly. His talk was orderly. His language was proper. The tone of his voice was not loud or raucous and at all times he acted in an orderly and lawful manner before the assembly. [103, 234] There was nothing in his speech that invited the members of the audience to do violence or commit an unlawful act. [103, 234] There was no clear and present danger of such resulting. [103] The undisputed evidence shows that his conduct and demeanor were entirely appropriate and that his sermon was based upon the Bible. [103, 105-106, 234]

Appellant talked for about ten or fifteen minutes. [232] Suddenly he was accosted by the Chief of Police. [93, 232] The Chief informed him that he was under arrest, thus stopping the talk and breaking up the assembly. [93, 234]

The Chief of Police and all of the witnesses for the prosecution admitted that there was no evidence of violence and that there was no clear and present danger of any disturbance resulting from the giving of the public talk. [105, 110-111, 117, 122-123, 128-130, 135] All of the witnesses for the prosecution admitted that appellant at all times conducted himself with propriety and decorum. [105, 110-111, 117, 122-123, 128-130, 135] The Chief of Police stated that the only reason that appellant was arrested was because the assembly had been held and the talk attempted to be given to the assembly in the public park without a permit after the City Council had denied the use of the park to Jehovah's witnesses. [106] Appellant was taken into custody and held in jail for several hours under the charge of having violated Section 131 of Article 27 de-

fining disorderly conduct. [235] He was thereafter released. [235]

Use of the park for the holding of this meeting, as one of a series of four meetings, had been made by a duly recognized congregation of Christians located in Havre de Grace, known as Jehovah's witnesses. [145-165] The congregation is a group of missionary evangelists that perform door-to-door evangelistic work and also maintain a place of worship in Havre de Grace open to the public. [139-140] They carry on preaching activity in Harford County under the direction of the Watchtower Bible and Tract Society, Inc. of Brooklyn, New York, the legal governing body of Jehovah's witnesses in the United States. [138-139]

A series of public Bible talks in the public park in Havre de Grace was planned during the summer season of the year which is suitable for open air public meetings. [142-144] The Havre de Grace congregation of Jehovah's witnesses applied to the City Council for permission to use the park. [145, 165] The application was in writing. [184-187] The letter requesting the permit was handed to a member of the City Council, who was chairman of the Park Committee. [146, 165] The request in writing was for permission to use the park on four consecutive Sundays, June 12, June 19, June 26 and July 3, 1949. [184-187] The permit for the first Sunday was not granted because the park was being used on that day for a flag ceremony by the Order of Elks. [174, 175, 178] In the interest of harmony and in order to avoid confusion of two groups using the park on that day, Jehovah's witnesses did not proceed to hold their meeting as scheduled. [148, 149] In an effort to get a reply from the Council member in charge of the parks, who later declined to grant the permit, the matter was referred to the entire City Council for

determination. The Council planned on meeting June 20, 1949. At the request of the Mayor Jehovah's witnesses again failed to use the park for the second of the scheduled dates on June 19th. [151] The reason for this date going by without use of the park by Jehovah's witnesses was because the Mayor said that it would be better for them not to use the park until after the Council had decided the matter on June 20. [151-152, 179]

At the hearing on June 20th the Council arbitrarily and capriciously denied the application for a permit. Members of the Council stated that they would not allow Jehovah's witnesses to use the park because they were the people who refused to salute the flag and failed to bear arms in the armed forces in defense of the country. [158, 193-196] Jehovah's witnesses attempted to answer questions propounded to them by members of the Council on these points and to justify their stand as to the flag salute and military service by fact, law and Scripture. [197] They were denied the right to give such evidence and argument before the Council. [197]

A complete stenographic report of the proceedings before the Council upon its consideration and denial of the application for permission to use the park was made. [207-222] Although accurately reported and transcribed, the report was rejected and the trial judge denied appellant the right to introduce it into evidence and refused to permit the stenographer to use the transcript or her shorthand notes in the giving of testimony as to what took place at the hearing. [207, 223] However the notes were used in cross-examination of the mayor as to what took place at the meeting and he admitted the correctness of the material parts of the transcript of the minutes. [34-60]

At the conclusion of the proceeding before the Council, a ruling was made denying Jehovah's witnesses the right

to use the park on arbitrary and capricious grounds. [9, 31-33, 161, 221]

The mayor attempted to justify the denial of the permit and the subsequent arrest of the appellant for holding a meeting and giving a speech in the park on the grounds that it was necessary to protect the appellant and others from mob violence in the City of Havre de Grace. [66-70] The record failed to show that threat of mob violence was true and there was absolutely no evidence of threatened mob violence, immediate or remote, at the park upon the occasion of the speech made by the appellant. The testimony was to the contrary.

The Council was informed orally by Jehovah's witnesses at the end of the hearing on June 20, and also by a written letter that Jehovah's witnesses would use the park notwithstanding the denial of the permit by the Council. Jehovah's witnesses advised the council that the Constitution barred the Council from requiring a permit as a condition precedent to holding a meeting or giving a speech in the public park and that the Supreme Court of the United States ruled to that effect in many cases. [202-204]

Thereafter Jehovah's witnesses persisted in their plans to hold the public meeting in the park, resulting in the arrest of the appellant as above stated.

It was stipulated that there was no ordinance of the City of Havre de Grace regulating the use of the park or requiring an application for a permit or prescribing standards for the issuance of a permit to use the park for a public meeting. [70, 244] The facts presented by the prosecution showed that there was a *custom* in Havre de Grace which required persons proposing to use the park for purposes of assembly and giving talks to apply for a permit from the City Council. The City of Havre de Grace, through its Mayor on the trial, took the position

that it was not necessary to have an ordinance regulating the use of the park, but that the requirement of a permit from the City Council was inherent in the Council by virtue of the Charter of the City of Havre de Grace issued pursuant to the laws of Maryland. [70, 71, 72]

Grounds Sustaining Jurisdiction

I

The Maryland disorderly conduct statute has been construed and applied in a manner by the courts of Maryland as to bring it into conflict with the First and Fourteenth Amendments to the United States Constitution.

II

The rights of the appellant to freedom of assembly, freedom of speech and freedom of worship have been abridged by the conviction in the Circuit Court for Harford County, contrary to the first and Fourteenth Amendments to the United States Constitution.

Discussion of the Grounds and Decisions

The conviction, under the disorderly conduct statute is based upon the refusal of the appellant to comply with an order of the Chief of Police executing a ruling of the City Council that Jehovah's witnesses could not use the public park of Havre de Grace. Although there is no ordinance requiring a permit from the City Council before the park could be used, there existed a custom in the city making such permit necessary. It was the failure to have the permit, holding a meeting and making a speech in the park without a permit that resulted in the conviction for disorderly conduct. Whether the conviction abridges the rights of appellant, contrary to the First and Fourteenth

Amendments, depends entirely upon the validity of the custom of the City of Havre de Grace in respect to meetings in the park as enforced by the City Council and the Chief of Police.

The Court has held that streets and parks have, from time immemorial, been held in trust by cities for the use of the public as places of assembly where speeches can be made and talks given, as well as literature distributed. *Hague* v. *C. I. O.*, 307 U. S. 496; *Schneider* v. *New Jersey*, 308 U. S. 147; *Jamison* v. *Texas*, 318 U. S. 413; *Saia* v. *New York*, 334 U. S. 558.

A custom, regulation, law or ordinance of a city or the state which requires a permit from any official, board or council as a condition precedent to holding an assembly, giving a talk or distributing literature in a public park or upon a public street is void. This was held in *Hague* v. *C. I. O.*, 307 U. S. 496; *Schneider* v. *New Jersey*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Largent* v. *Texas*, 318 U. S. 418; *Saia* v. *New York*, 334 U. S. 558; *Commonwealth* v. *Gilfedder*, 321 Mass. 335, 73 N. E. 2d 241; *Sellers* v. *Johnson*, 163 F. 2d 877. Outright prohibition by a law or ordinance of the use of the streets or the parks for the making of speeches, holding of assemblies or distribution of literature is void. *Jamison* v. *Texas*, 318 U. S. 147; *Thornhill* v. *Alabama*, 310 U. S. 88.

The effect of these decisions is that the City Council is shorn of all authority to require a permit as a condition precedent to the holding of the meeting and the giving of the talk by the appellant in the public park upon the occasion in question. These decisions establish that the chief of police acted unlawfully and committed false arrest when he took the appellant into custody.

The action of the chief of police in persisting in arresting the appellant after he and the city council had been

warned of the constitutional rights of the appellant and showed the above decisions of the Supreme Court, moreover, constitutes a violation of the Federal Civil Rights Act. "Take the case of a local officer who persists in enforcing a type of ordinance which the Court has held invalid as violative of the guarantees of free speech or freedom of worship. Or a local official continues to select juries in a manner which flies in the teeth of decisions of the Court. If those acts are done willfully, how can the officer possibly claim that he had no fair warning that his acts were prohibited by the statute? He violates the statute not merely because he has a bad purpose but because he acts in defiance of announced rules of law. He who defies a decision interpreting the Constitution knows precisely what he is doing. If sane, he hardly may be heard to say that he knew not what he did. Of course, willful conduct cannot make definite that which is undefined. But willful violators of constitutional requirements which have been defined, certainly are in no position to say that they had no adequate advance notice that they would be visited with punishment. When they act willfully in the sense in which we use the word, they act in open defiance or in reckless disregard of a constitutional requirement which has been made specific and definite. When they are convicted for so acting, they are not punished for violating an unknowable something." *Screws* v. *United States*, 325 U. S. 91, 104-105.

The appellees contended in the court below that the City of Havre de Grace had the power to regulate the use of the parks. While it has the power to regulate, it must do so by law. The limit of authority in the City of Havre de Grace in respect to regulation of the parks is to regulate as to time and manner of use of the parks. This regulation must be done by law. The custom required a permit

as a condition precedent to the exercise of civil rights in a public park. This has been held not to be regulatory. *Saia* v. *New York*, 334 U. S. 558; *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *New Jersey*, 308 U. S. 147; *Cantwell* v. Connecticut, 310 U. S. 296; *Largent* v. *Texas*, 318 U. S. 418; *Hague* v. *C. I. O.*, 307 U. S. 496.

In *Blue Island* v. *Kozul*, 379 Ill. 511, 51 N. E. 2d 515, a conviction under a city by-law or regulation providing for the procuring of a license and the payment of a fee was set aside. The City of Blue Island argued that its ordinance was regulatory. "It is contended by the city that this is a regulatory ordinance. A municipality may enact regulations in the interests of public safety, health, welfare or convenience, within the limits permitted by law, but in every case this power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe that freedom protected by the United States Constitution and by the Constitution of the State of Illinois. *Cantwell* v. *Connecticut, supra; Schneider* v. *Town of Irvington, supra.* The ordinance is not regulatory. As applied to the facts in this case, the ordinance makes no provision regulating the manner of carrying on the business of peddlers in the city of Blue Island."

The Court has specifically stated that while the city may have the authority to regulate as to time, place and manner, it may not (under the claim that it is using the police power to regulate, or under the guise of regulation) abridge the rights guaranteed by the Constitution through the requirement of a permit as a condition precedent to the exercise of such rights. *Schneider* v. *New Jersey*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296.

It was contended by the appellee in the court below that appellant was guilty of disorderly conduct because he failed to bring an action for injunction or other civil relief which

would subject the administrative determination by the City Council of Havre de Grace on the application for a permit to judicial review and redress before using the park which resulted in the prosecution. The mere availability of a civil remedy does not deprive the person charged with disorderly conduct of the right to assert that the prosecution is unconstitutional or that the requirement of a permit is void, as a defense to the criminal proceedings.

A similar argument was made by the State of Connecticut and rejected in *Cantwell* v. *Connecticut*, 310 U. S. 296. In that case, in the decision of the Supreme Court of the United States, Mr. Justice Roberts, speaking for the Court, among other things, said:

"The State asserts that if the licensing officer acts arbitrarily, capriciously, or corruptly, his action is subject to judicial correction. Counsel refer to the rule prevailing in Connecticut that the decision of a commission or an administrative official will be reviewed upon a claim that 'it works material damage to individual or corporate rights, or invades or threatens such rights, or is so unreasonable as to justify judicial intervention, or is not consonant with justice, or that a legal duty has not been performed.' It is suggested that the statute is to be read as requiring the officer to issue a certificate unless the cause in question is clearly not a religious one; and that if he violates his duty his action will be corrected by a court.

"To this suggestion there are several sufficient answers. The line between a discretionary and a ministerial act is not always easy to mark and the statute has not been construed by the State court to impose a mere ministerial duty on the secretary of the welfare council. Upon his decision as to the nature of the cause, the right to solicit depends. Moreover, the availability of a judicial remedy

for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action." *Cantwell* v. *Connecticut*, 310 U. S. 296, at pages 305-306. Compare *Estep* v. *United States*, 327 U. S. 114.

The judgment of the Circuit Court for Harford County, therefore, is out of harmony with and in conflict with the decisions of the Supreme Court of the United States in *Hague* v. *C. I. O.*, 307 U. S. 496; *Saia* v. *New York*, 334 U. S. 558; *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *New Jersey*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296 and *Largent* v. *Texas*, 318 U. S. 418. It also conflicts with *Commonwealth* v. *Gilfedder*, 321 Mass. 335, 73 N. E. 2d 241 and *Sellers* v. *Johnson*, 163 F. 2d 877, which decisions are directly in point, involving park meetings and regulation of parks, as does *Hague* v. *C. I. O.*, 307 U. S. 496. In fact the action of the Circuit Court for Harford County has best been described by Mr. Justice Markell of the Court of Appeals of Maryland. He declared that appellant's "rights under the Constitution of the United States of freedom of worship, freedom of speech and freedom of assembly have been wantonly violated and completely flouted by the municipality of Havre de Grace and by the circuit court." See his concurring opinion appearing in Appendix B to this Statement as to Jurisdiction.

The decision of the Circuit Court for Harford County is plainly erroneous and, because it defies the decisions of the Court, it would be appropriate, without more, to note jurisdiction and reverse the judgment of the court below on the ground that it is not compatible with and

flouts the decisions of the Court. This would not require an oral argument and further hearing in the Supreme Court. This was done in *Brotherhood of Railway and Steamship Clerks* v. *United Transport Service Employees*, 320 U. S. 816; and *United States* v. *Balogh*, 329 U. S. 692; rehearing denied 329 U. S. 835. Compare *Mathews* v. *West Virginia*, 320 U. S. 707.

In event the Supreme Court should reverse the judgment of the Circuit Court for Harford County upon a consideration of this jurisdictional statement, the Supreme Court is requested to write a considered opinion, which will guide the Circuit Court and the officials of Havre de Grace in proper recognition of the right of the people of the United States to use the public parks of Harford County and the one in the City of Havre de Grace. Unless appropriate consideration and sufficiently explicit condemnation of the illegal action of the officials of Havre de Grace and the Circuit Court for Harford County are returned to the Circuit Court in the form of an opinion, it may reasonably be expected that the same problem, from the same court, involving the same issues and the same group will be back before the Court at the next term. The city and the court are obdurate in their opposition to the exercise of civil liberties by Jehovah's witnesses in the public park of Havre de Grace.

Conclusion

Wherefore the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of the Court, because the Circuit Court for Harford County disposed of important and substantial Federal questions in a way that is in conflict with the Constitution of the United States and applicable decisions of the Supreme Court of the United States, and has so radi-

cally and far departed from the Constitution of the United States and the accepted sound course of judicial procedure as to call for exercise by the Supreme Court of the United States of its power of supervision and review to halt the same.

Respectfully submitted,

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APPENDIX A

No. 1, Misc., October Term, 1949

PETITION FOR CERTIORARI

DANIEL NIEMOTKO

vs.

STATE OF MARYLAND

NEIL W. KELLEY

vs.

STATE OF MARYLAND

Before Marbury, C. J., and Delaplaine, Collins, Grason, Henderson and Markell, JJ.

Opinion by Marbury, C. J.

Filed January 11, 1950

Separate petitions have been filed in this Court for writs of certiorari to review convictions and judgments of the Circuit Court for Harford County in two cases appealed from trial magistrates' decisions. One case is against Daniel Niemotko, and the other against Neil W. Kelley. The facts are identical in each case. Each petitioner was charged with the same offense. Each was convicted of disorderly conduct before the trial magistrate and fined $50 and costs. Each appealed to the Circuit Court, and was tried before a jury which found him guilty. A fine of $50 and costs was imposed upon each of the petitioners by the Court, and it is these judgments we are asked to review. The petitions are filed under the provisions of Article 5, Section 104 which authorizes such a petition in any case, civil or criminal, in which a final judgment has been rendered by the Circuit Court of any county or by one of the courts of Baltimore City upon appeal from a Justice of the Peace if it shall be made to appear to us that a review is necessary "to secure uniformity of decision, as

where the same statute has been construed differently by the courts of two or more circuits or that there are other special circumstances rendering it desirable and in the public interest that the case should be reviewed." This section has been used in State vs. Depew, 175 Md. 274, and Darling Shops vs. Baltimore Center Corp., — Md. —, 60 At. 2d, 669. In both of these cases the question raised was an erroneous construction of law, and a representation that conflicting decisions had been made throughout the state on the questions involved. The latter allegation is not made in the petitions before us.

The facts stated in the petitions are that the petitioners are ordained ministers of the Gospel and members of the sect known as Jehovah's witnesses. They were invited by a congregation of that sect in Havre de Grace, Maryland, to give a public talk upon a Bible subject, Niemotko, on June 26, 1949, and Kelley on July 3, 1949. Niemotko had been informed that the City Council of Havre de Grace had refused to allow Jehovah's witnesses to hold the assembly in the Park. When he arrived there, a number of policemen were present, and the Chief of Police advised him that if he attempted to talk he would be arrested. He did start to talk, was allowed to continue for ten or fifteen minutes, and then was arrested. The charge against him was laid under the disorderly conduct statute, Section 131 of Article 127.

Kelley appeared on the following Sunday with knowledge of the arrest of Niemotko, and was likewise informed by the Chief of Police at the Park that if he attempted to talk he would be arrested. Previous to these meetings the local Congregation of Jehovah's witnesses had requested the City Council for permission to use the park for four consecutive Sundays. After a hearing before the Council on June 20, 1949, this application was denied and Jehovah's witnesses thereupon delivered the Council a written letter stating that they would use the park, because, in their opinion, any prohibition against such use was in violation of the decisions of the Supreme Court of the United States.

The questions which the petitioners wish us to review are stated as follows:

(1) Does the making of a speech to a peaceable public assembly in a public park without a permit from the City Council of Havre de Grace and contrary to the order of the Chief of Police constitute disorderly conduct in violation of Section 131, Article 27 of the Code of Public General Laws of Maryland?

(2) Does the undisputed evidence show that there was no violation of Section 131, Article 27 of the Code of Public General Laws of Maryland?

(3) Do the verdict and judgment rendered against the petitioner in the court below abridge the petitioner of his right to freedom of speech, freedom of assembly, freedom of worship and freedom of conscience, contrary to the First and Fourteenth Amendments to the United States Constitution and the Declaration of Rights of Maryland?

(4) Did the trial court commit egregious reversible error in denying petitioner the right to examine the prospective jurors on *voir dire* as to prejudice and knowledge of the case so as to intelligently exercise his peremptory challenge and to ascertain the existence of grounds warranting challenges for cause?

(5) Did the trial court commit egregious reversible error in excluding evidence and testimony offered by the petitioner and by unduly limiting petitioner's right to cross-examine the witnesses for the prosecution?

(6) Did the trial court commit egregious reversible error in allowing the prosecutor to argue erroneous statements of law to the jury and in denying counsel for the petitioner the right to make and to complete his objections to such arguments?

(7) Did the trial court commit reversible error in overruling the motion for dismissal of the prosecution and for a judgment of acquittal?

(8) Did the trial court commit reversible error in overruling the motion for directed verdict of "not guilty"?

(9) Did the trial court commit reversible error in overruling the motion for judgment notwithstanding the verdict?

(10) Did the trial court commit reversible error in overruling the motion for new trial?

(11) Did the trial court commit egregious and reversible error in rendering a judgment of conviction upon the verdict of the jury?

These questions require us to review the evidence in a case heard before a jury, and also to review the conduct of the trial court in refusing motions for directed verdicts of not guilty, motions directing verdicts of acquittal, motions for judgments N. O. V., in overruling motions for a new trial, and in entering judgments upon the verdicts. It has, of course, been many times decided by this Court that since by Article 15, Section 5 of the Constitution of this State, the jury are the judges of law as well as of fact in the trial of all criminal cases, the courts cannot review the evidence or instruct the jury on the law, except in an advisory capacity. Wheeler vs. State, 42 Md. 569, Broll vs. State, 45 Md. 359, Abbott vs. State, 188 Md. 310, Herring vs. State, 189 Md. 172. If these petitions were granted we would, therefore, be unable to determine whether the facts proven showed a violation of the disorderly conduct statute, and we cannot find from the petition that the application of the statute to the facts by the jury was in violation of the decisions of the Supreme Court. In this State the *nisi prius* court (in this case the Circuit Court for Harford County) is the final judge of the sufficiency of the evidence in any criminal case by its action upon a motion for a new trial. This motion has been made and denied, and it is not reviewable here. Snyder vs. Cearfoss, 186 Md. 360, Winkler vs. State, No. 25, October Term, 1949, — Md. —.

In this State ~~we have~~ no practice of motions for a judgment of acquittal, motions for a directed verdict of not guilty, or motions for judgment N. O. V. in a criminal case. All the other points raised involve matters affecting the conduct of the trial, which are largely in the discretion of the trial court. They are not matters of public interest which make it desirable for us to review the cases under

Article 5, Sec. 104, and we do not think they are the type of cases which that section is intended to cover.

For these reasons, both petitions will be denied.

APPENDIX B

No. 1, Misc., October Term, 1949

PETITION FOR CERTIORARI

DANIEL NIEMOTKO

vs.

STATE OF MARYLAND

NEIL W. KELLEY

vs.

STATE OF MARYLAND

Before Marbury, C. J., and Delaplaine, Collins, Grason, Henderson and Markell, JJ.

Concurring memorandum by Markell, J.

Filed January 11, 1950

Markell, J., concurring in the result

If the facts alleged in the petitions are supported by the records (which are not before us), petitioners' rights under the Constitution of the United States of freedom of worship, freedom of speech and freedom of assembly have been wantonly violated and completely flouted by the municipality of Havre de Grace and by the circuit court. Lovell v. Griffin, 303 U. S. 444; Hague v. C. I. O., 307 U. S. 496; Schneider v. State (Town of Irvington), 308 U. S. 147, and many subsequent cases. Rectification of such outrages would be the most compelling "special circumstances rendering it desirable and in the public interest that the cases should be reviewed."

However, so long as this court adheres to its position that Maryland criminal procedure—or lack of procedure—is supreme over the Constitution of the United States (Winkler v. State, — Md. —, 69 A. 2d 674), review of these cases by this court would result not in rectification of outrages, but in frustration. Petitioners would still be forced to go to the Supreme Court for enforcement of their constitutional rights which this court refuses to enforce when the facts have been covered by a false label in manner sanctified by Maryland practice. As petitioners have no right of appeal to this court in these cases, denial of discretionary review by certiorari will leave them free to go direct from the Circuit Court to the Supreme Court by appeal or application for certiorari, thus saving them the delay and expense of futile review in this court. Solely to expedite petitioners' quest for justice and vindication of their constitutional rights I concur in the denial of certiorari in these cases.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, ~~1949~~ 1950

#17

No. ~~000~~ #18

NEIL W. KELLEY, *Appellant,*

vs.

STATE OF MARYLAND

APPEAL FROM THE CIRCUIT COURT OF HARFORD COUNTY, STATE OF MARYLAND

STATEMENT AS TO JURISDICTION

HARRY YAFFE,
HAYDEN C. COVINGTON,
Counsel for Appellant.

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CIRCUIT COURT FOR HARFORD COUNTY,
STATE OF MARYLAND

No. 600

STATE OF MARYLAND

vs.

NEIL W. KELLEY,

Defendant, Appellant

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 (1) of the Supreme Court of the United States, as amended April 6, 1942, appellant files his statement disclosing the basis upon which he contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 1257 (2).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a

matter of right on writ of error. This case presents a state of facts within the jurisdiction of this Court.

Legislation Drawn in Question

This case draws into question the validity of state legislation, to wit, Section 131 of Article 27 of the Code of Public General Laws of Maryland, which reads as follows:

> Every person who shall be found drunk, or acting in a disorderly manner, to the disturbance of the public peace, upon any public street or highway, in any city, town or county, in this State, or at any place of public worship or public resort or amusement in any city, town or county of this state, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not more than fifty dollars, or be confined in jail for a period of not more than Sixty days or be both fined and imprisoned in the discretion of the court. Habitual offenders may be fined not more than one hundred dollars or committed to jail for not more than six months. An habitual offender is a person who shall have been convicted under the provisions of this section five (5) times in the preceding (12) months. The trial magistrates of the respective counties of this State shall have concurrent jurisdiction over such offenses with the circuit court for their respective counties; and police magistrates selected to sit at the respective station houses in the city of Baltimore shall have concurrent jurisdiction over such offense with the criminal court of Baltimore City. (Annotated Code of Maryland, Article 27, Section 131, 1943 Supplement)

The above statute was construed and applied to the undisputed facts showing that the appellant was not guilty of any kind of disorderly conduct and that appellant was exercising the right of freedom of speech and freedom of assembly and freedom of worship, guaranteed against abridgment by the First and Fourteenth Amendments of the United States Constitution.

Constitutional Provisions Involved

The First Amendment is invoked in this case against the conviction of the appellant under the foregoing statute. The First Amendment reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment of the United States Constitution makes applicable against the States, so as to protect the appellant against the conviction in the case, the First Amendment to the United States Constitution. The pertinent parts of the Fourteenth Amendment read as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Circuit Court for Harford County the Court of Last Resort

The Circuit Court for Harford County, Maryland, was the highest court in the State of Maryland in which a decision could be had in this cause, although such court is not the highest court in the State of Maryland. The judgment of conviction by the Circuit Court for Harford County was not susceptible of further review in the state courts, and all proper steps were taken to secure further review in presenting an application for a writ of certiorari to the Court of Appeals of Maryland. See the majority and concurring opinions of that court, wherein it refused to exercise its discretionary power and allow a review of the conviction by

the Court of Appeals of Maryland. (Appendices A and B of the Statement as to Jurisdiction, pp. 20-24, in the companion case, *State of Maryland* v. *Daniel Niemotko.*)

The Circuit Court for Harford County, a trial court of original jurisdiction, rendered the judgment of conviction upon which the appeal herein is taken. Said judgment of said intermediate State court was rendered upon a trial *de novo* before a jury, which is the final judge of the law and fact, following an appeal from a magistrate's court.

The Supreme Court of the United States has held that where a judgment of a court is subject to discretionary review and such review is exhausted, the appeal may be taken directly to the Supreme Court of the United States, even though the judgment appealed from may be that of a trial court. See *Bacon* v. *Texas*, 163 U. S. 207, 215; *Sullivan* v. *Texas*, 207 U. S. 416, 422; *San Antonio & A. P. R. Co.* v. *Wagner*, 241 U. S. 476, 477; *Randall* v. *Board of Commissioners*, 261 U. S. 252; *Western Union Tel. Co.* v. *Crovo*, 220 U. S. 364, 366; *Stanley* v. *Schwalby*, 162 U. S. 255, 269; *Norfolk & S. Turnpike Co.* v. *Virginia*, 225 U. S. 264, 269; *Cuyahoga Power Co.* v. *Northern Realty Co.*, 244 U. S. 300, 302, 303; *Western Union Tel. Co.* v. *Priester*, 276 U. S. 252, 258; *Pennsylvania Railroad Co.* v. *Illinois Brick Co.*, 297 U. S. 447, 453; *Mellon* v. *O'Neill*, 275 U. S. 212, 213; *Second National Bank of Cincinnati* v. *First National Bank of Oceana*, 242 U. S. 600; *Chesapeake & Ohio Ry Co.* v. *Kuhn*, 284 U. S. 44, 45.

Timeliness

The judgment of the Circuit Court for Harford County convicting the appellant and assessing a fine was rendered and entered on November 29, 1949. (1) [1]

[1] Figures appearing in parentheses refer to pages of the Clerk's typewritten transcript of the papers filed in the Circuit Court for Harford County.

The judgment of the Court of Appeals of Maryland was rendered on the 10th day of January, 1950 and entered on the 11th day of January, 1950, whereupon the judgment of conviction made by the Circuit Court became final. This appeal is duly presented and filed within three months from the date such judgment of the Circuit Court for Harford County, Maryland, became final. This appeal is therefore timely.

Opinion

The Court of Appeals of Maryland wrote an opinion. The court did not pass on the merits but ruled that it had no jurisdiction to review the conviction. The opinion is not yet reported. It, together with the concurring opinion, is set out in the record. These opinions are also appended to the Statement as to Jurisdiction, pp. 20-24, in the companion case, *State of Maryland* v. *Daniel Niemotko* (Appendices A and B).

The Circuit Court for Harford County wrote no opinion. The verdict and judgment both appear in the record. (1)

Nature and History of the Action

This action arose in the Magistrate's Court of Havre de Grace. (1, 2) Magistrate G. Howlett Cobourn issued a warrant for the arrest of the appellant upon the oath of Chief of Police Walter Walker, who charged appellant with disorderly conduct. (2) Trial before the Magistrate resulted in a fine of $50 and costs. (2) An appeal was duly entered to the Circuit Court for Harford County. (3) Appearance bond was made. (3) The transcript was duly filed and the case was made returnable at the November Term of the Circuit Court. (1) Upon the calling of the case for trial *de novo* appellant was arraigned and pleaded not guilty. (1)

The trial began before the judge of the court below to a jury on Monday, November 28, 1949. (1) [1][2] The evidence was concluded on Tuesday, November 29th. (1) Motions to dismiss and for a directed verdict were duly made. (1, 3-5) [245, 246-247] Requested instructions were duly submitted by the appellant, which were denied. [247-272] The law and fact were argued by counsel to the jury. [277] The jury retired and promptly returned with a verdict of guilty. (1) Judgment was pronounced against the appellant upon the verdict whereby appellant was fined $50 and costs. (1)

The appellant promptly prepared and filed with the Court of Appeals of Maryland a written application for writ of certiorari, asking discretionary review of the conviction by the Court of Appeals pursuant to Section 104 of Article 5 of the Code of Public General Laws of Maryland (Chapter 238 of Public Laws of 1937). This application was denied on January 10, 1950 and the order entered on January 11, 1950. The opinions, holding that the court had no jurisdiction to decide whether the civil rights of appellant secured by the First and Fourteenth Amendments, had been abridged by the City of Havre de Grace and the Circuit Court, are appended to the Statement as to Jurisdiction in the companion case, *State of Maryland* v. *Daniel Niemotko*, pp. 20-26.

How Issues Raised

The appellant pleaded not guilty. (1) This plea set in issue all of the grounds raised upon this appeal. (1) In his motion for a dismissal of the prosecution, as well as in his motion for an instructed verdict of not guilty, the appellant asserted that if he should be convicted upon the facts disclosed in the record that it would abridge his rights of free-

[2] Figures appearing in brackets refer to pages of the typewritten stenographic transcript of the testimony and proceedings at the trial in the Circuit Court for Harford County.

dom of assembly, freedom of speech, freedom of worship and freedom of conscience, contrary to the First and Fourteenth Amendments to the Constitution of the United States. (1, 3-5.)

Summary of Facts

There is absolutely no question of the sufficiency of the evidence. There was no material conflict in the testimony relating to the Federal questions presented here. The facts are established by the undisputed evidence adduced upon the trial to the jury in the court below. They shall now be stated.

The appellant is an ordained minister of the gospel. [237] He is associated with the Watchtower Bible and Tract Society of Brooklyn, New York, and Jehovah's Witnesses. [237] He resides at Baltimore, Maryland. [237] He was invited by a small congregation of Jehovah's Witnesses located in Havre de Grace, Maryland, to give a public talk upon a Bible subject in the public park of Havre de Grace on July 3, 1949. [238] The talk began at 2:00 P. M. Shortly before the talk was to begin appellant arrived in the park. [239] The audience was assembled at an appropriate place in the park for the holding of a public meeting. [239] Appellant had been informed of the arrest of Daniel Niemotko the Sunday previous but thought the trouble had been cleared up. [238] On arriving at the park he noticed a number of policemen in uniform, among whom was the Chief of Police. He walked over to the Chief and attempted to convince the Chief of Police that the action of the City Council was unlawful and unconstitutional and that neither the City Council nor the Chief had a right to forbid Jehovah's Witnesses from holding the assembly or appellant from giving the public talk to the assembly. [239] Kelley informed the Chief that he was going to proceed with the talk at the scheduled time. Chief Walker told appellant

that if he attempted to give the talk he would be arrested. [239-240]

At the scheduled time appellant stood up and attempted to address the assembly. [240] He said only one sentence and was then arrested by the Chief of Police. [103-104, 240-241] The Chief informed him that he was under arrest, thus stopping the talk and breaking up the assembly. [240-241] The Chief did permit appellant to make an announcement that the talk would be given in a private place outside the city by another speaker. [240-241]

Appellant's language was proper. [103, 241] The tone of his voice was not loud or raucous and he acted in an orderly and lawful manner before the assembly. [103, 241] There was nothing in what he said that invited the members of the audience to do violence or commit an unlawful act. There was no clear and present danger of such resulting. The undisputed evidence shows that his conduct and demeanor were entirely appropriate and that his sermon was based upon the Bible. [103, 105-106, 241-242]

The Chief of Police and all of the witnesses for the prosecution testified that there was no evidence of violence and that there was no clear and present danger of any disturbance resulting from the attempt to deliver the public talk. [105, 110-111, 117, 122-123, 128-130, 135] All of the witnesses for the prosecution admitted that appellant at all times conducted himself with propriety and decorum. [105, 110-111, 117, 122-123, 128-130, 135] The Chief of Police stated that the only reason that appellant was arrested was because the assembly had been held and the talk attempted to be given to the assembly in the public park without a permit, after the City Council had denied the use of the park to Jehovah's Witnesses. [106] Appellant was taken into custody and held in jail for several hours under the charge of having violated Section 131 of Article 27 de-

fining disorderly conduct. He was thereafter released [241]

Use of the park for the holding of this meeting, as one of a series of four meetings, had been made by a duly recognized congregation of Christians located in Havre de Grace, known as Jehovah's witnesses. [145-165] The congregagation is a group of missionary evangelists that perform door-to-door evangelistic work and also maintain a place of worship in Havre de Grace open to the public. [139-140] They carry on preaching activity in Harford County under the direction of the Watchtower Bible and Tract Society, Inc., of Brooklyn, New York, the legal governing body of Jehovah's Witnesses in the United States. [138-139]

A series of Public bible talks in the public park in Havre de Grace was planned during the summer season of the year which is suitable for open air public meetings. [142-144] The Havre de Grace congregation of Jehovah's Witnesses applied to the City Council for permission to use the park. [145, 165] The application was in writing. [184-187] The letter requesting the permit was handed to a member of the City Council, who was chairman of the Park Committee. [146, 165] The request in writing was for permission to use the park on four consecutive Sundays, June 12, June 19, June 26 and July 3, 1949. [184-187] The permit for the first Sunday was not granted because the park was being used on that day for a flag ceremony by the Order of Elks. [174, 175, 178] In the interest of harmony and in order to avoid confusion of two groups using the park on that day, Jehovah's Witnesses did not proceed to hold their meeting as scheduled. [148, 149] In an effort to get a reply from the Council member in charge of the parks, who later declined to grant the permit, the matter was referred to the entire City Council for determination. The Council planned on meeting June 20, 1949. At the request of the Mayor Jehovah's Witnesses again failed to use the park for the second

of the scheduled dates on June 19th. [151] The reason for this date going by without use of the park by Jehovah's Witnesses was because the Mayor said that it would be better for them not to use the park until after the Council had decided the matter on June 20. [151-152, 179]

At the hearing on June 20th the Council arbitrarily and capriciously denied the application for a permit. Members of the Council stated that they would not allow Jehovah's Witnesses to use the park because they were the people who refused to salute the flag and failed to bear arms in the armed forces in defense of the country. [158, 193-196] Jehovah's Witnesses attempted to answer questions propounded to them by members of the Council on these points and to justify their stand as to the flag salute and military service by fact, law and Scripture. [197] They were denied the right to give such evidence and argument before the Council. [197]

A complete stenographic report of the proceedings before the Council upon its consideration and denial of the application for permission to use the park was made. [207-222] Although accurately reported and transcribed, the report was rejected and the trial judge denied appellant the right to introduce it into evidence and refused to permit the stenographer to use the transcript or her shorthand notes in the giving of testimony as to what took place at the hearing. [207, 223] However the notes were used in cross-examination of the mayor as to what took place at the meeting and he admitted the correctness of the material parts of the transcript of the minutes. [34-60]

The mayor attempted to justify the denial of the permit and the subsequent arrest of the appellant for holding a meeting and giving a speech in the park on the grounds that it was necessary to protect the appellant and others from mob violence in the City of Havre de Grace. [66-70] The record failed to show that threat of mob violence was true

and there was absolutely no evidence of threatened mob violence, immediate or remote, at the park upon the occasion of the speech made by the appellant. The testimony was to the contrary.

The Council was informed orally by Jehovah's Witnesses at the end of the hearing on June 20, and also by a written letter that Jehovah's Witnesses would use the park notwithstanding the denial of the permit by the Council. Jehovah's Witnesses advised the Council that the Constitution barred the Council from requiring a permit as a condition precedent to holding a meeting or giving a speech in the public park and that the Supreme Court of the United States ruled to that effect in many cases. [202-204]

Thereafter Jehovah's Witnesses persisted in their plans to hold the public meeting in the park, resulting in the arrest of the appellant as above stated.

It was stipulated that there was no ordinance of the City of Havre de Grace regulating the use of the park or requiring an application for a permit or prescribing standards for the issuance of a permit to use the park for a public meeting. [70-244] The facts presented by the prosecution showed that there was a *custom* in Havre de Grace which required persons proposing to use the park for purposes of assembly and giving talks to apply for a permit from the City Council. The City of Havre de Grace, through its Mayor on the trial, took the position that it was not necessary to have an ordinance regulating the use of the park, but that the requirement of a permit from the City Council was inherent in the Council by virtue of the Charter of the City of Havre de Grace issued pursuant to the laws of Maryland. [70, 71, 72]

Grounds Sustaining Jurisdiction

I

The Maryland disorderly conduct statute has been construed and applied in a manner by the courts of Maryland as to bring it into conflict with the First and Fourteenth Amendments to the United States Constitution.

II

The rights of the appellant to freedom of assembly, freedom of speech and freedom of worship have been abridged by the conviction in the Circuit Court for Harford County, contrary to the First and Fourteenth Amendments to the United States Constitution.

Discussion of the Grounds and Decisions

[For the argument and discussion the Court is referred to the discussion appearing under the heading "Discussion of the Grounds and Decisions" in the Statement as to Jurisdiction in the companion case of *State of Maryland* v. *Daniel Niemotko*, at pages 12 to 17 thereof, which argument and discussion is here referred to and made a part hereof as though copied at length herein.]

Conclusion

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of the Court, because the Circuit Court for Harford County disposed of important and substantial Federal questions in a way that is in conflict with the Constitution of the United States and applicable decisions of the Supreme Court of the United States, and has so radically and far departed from the Constitution of the

United States and the accepted sound course of judicial procedure as to call for exercise by the Supreme Court of the United States of its power of supervision and review to halt the same.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1950

No. ~~599~~ 17

DANIEL NIEMOTKO, *Appellant*

vs.

STATE OF MARYLAND

No. ~~600~~ 18

NEIL W. KELLEY, *Appellant*

vs.

STATE OF MARYLAND

APPEALS FROM CIRCUIT COURT FOR
HARFORD COUNTY, STATE OF MARYLAND

JOINT BRIEF FOR APPELLANTS

Hayden C. Covington
Counsel for Appellants

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Hayden C. Covington
Counsel for Appellants

OPINIONS BELOW

The Circuit Court for Harford County, Maryland, wrote no opinion. The Court of Appeals of Maryland wrote an

opinion, denying review and refusing to pass on the merits. The holding was that the court had no jurisdiction to review the convictions. The opinion is reported at 71 A. 2d 9. The opinion of the Court of Appeals of Maryland, together with the concurring opinion, appears in the record. (156-161)[1]

JURISDICTION

The judgments of conviction by the Circuit Court for Harford County assessing fines were rendered November 29, 1949. (1, 14) The petitions for review by the Court of Appeals of Maryland were duly and timely filed. (8, 22, 156-157) The Court of Appeals refused to issue writs of certiorari by order dated January 11, 1950. (156, 160) Petitions for appeal to the Supreme Court of the United States and accompanying papers for a review of the final judgments of the Circuit Court were duly presented. (9-12, 23-26) Chief Justice Vinson allowed the appeals on January 27, 1950. (12-13, 26-27)

Probable jurisdiction was noted March 13, 1950, and the causes were consolidated for argument and submission. 70 S. Ct. 576. (166)

The jurisdiction of this Court is invoked under Section 237(a) of the Judicial Code, 28 U. S. C. 1257 (2).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 446, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error. This case presents a state of facts within the jurisdiction of this Court.

[1] Figures appearing in parentheses herein refer to pages of the printed transcript of record.

QUESTIONS PRESENTED

I

Whether convictions of appellants for disorderly conduct, based on a refusal to comply with a requirement of the City of Havre de Grace that appellants obtain a permit from the city council before holding meetings and making talks in the city park, should be set aside because they abridge the rights of appellants to freedom of assembly, speech, conscience and worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution.

II

Whether the statute, as construed and applied to the conduct of appellants, abridges their rights to freedom of assembly, speech, conscience and worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution.

III

Whether the use by appellants, ministers of the gospel, of the public park to hold public meetings and deliver sermons is precluded because such is a sectarian use of public property in violation of the principles of separation of church and state found in the establishment provisions of the First Amendment to the United States Constitution.

STATUTE INVOLVED

There is here drawn into question the validity of state legislation, to wit, Section 131 of Article 27 of the Code of Public General Laws of Maryland, which reads as follows:

> Every person who shall be found drunk, or acting in a disorderly manner, to the disturbance of the public peace, upon any public street or highway, in any city, town or county, in this State, or at any place of public worship or public resort or amusement in any city, town or county of this state, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be subject to a fine of not more than fifty dollars, or be confined in jail for a period of not more than Sixty days or be both fined and imprisoned in the discretion of the court. Habitual offenders may be fined not more than one-hundred dollars or committed to jail for not more than six months. An habitual offender is a person who shall have been convicted under the provisions of this section five (5) times in the preceding (12) months. The trial magistrates of the respective counties of this State shall have concurrent jurisdiction over such offenses with the circuit court for their respective counties; and police magistrates selected to sit at the respective station houses in the city of Baltimore shall have concurrent jurisdiction over such offense with the criminal court of Baltimore City. (Annotated Code of Maryland, Article 27, Section 131, 1943 Supplement)

The above statute was construed and applied to the undisputed facts showing that appellants were not guilty of any kind of disorderly conduct and that they were exercising the rights of freedom of speech, freedom of assembly and freedom of worship, guaranteed against abridgment by the First and Fourteenth Amendments of the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment is invoked in this case against the conviction of the appellants under the foregoing statute. The First Amendment reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fourteenth Amendment of the United States Constitution makes applicable against the states, so as to protect the appellants against the conviction in the case, the First Amendment to the United States Constitution. The pertinent parts of the Fourteenth Amendment read as follows:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

Nature and History of Action

These cases were brought by the State of Maryland in the Magistrate's Court of Havre de Grace to convict the appellants of disorderly conduct as charged in the warrants issued by the magistrate. (1-2, 15-16) Trials before the magistrate resulted in convictions. (2, 16) Appeals were taken to the Circuit Court for Harford County. (2, 16) The magistrate's transcript was duly filed in the Circuit Court. (1, 2, 14, 16) The cases were called for trial *de novo* in the Circuit Court, whereupon appellants were arraigned and pleaded not guilty. (1, 14, 28-29)

The judge of the Circuit Court denied appellants the right to question the jurors on their *voir dire* to determine whether they were subject to challenge for cause. (29-30) The cases proceeded to trial to a jury. (28-30) Evidence was heard for two days. (28-143)

At the close of the evidence appellants moved for a dismissal of the prosecutions and for instructed verdicts on the ground that the statute as construed and applied abridged their rights to freedom of assembly, speech, conscience and worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution. (3-4, 16-18, 143) The motions were denied. (144) Various requested instructions to the jury, raising the constitutional questions presented upon these appeals, were submitted by appellants to the trial judge and refused. (144-155)

During the closing argument to the jury the prosecutor informed the jury that the appellants were guilty of disorderly conduct in violation of the statute because they had refused to apply for a writ of mandamus or for an injunction against the city council of Havre de Grace and thus secure judicial review of the denial of the permit to use the public park before holding the meetings. (155) This argument was objected to on the ground that it invited the jury to violate

the constitutional rights of the appellants and defied the decision of this Court in *Cantwell* v. *Connecticut,* 310 U. S. 296. (155-156) The trial court refused counsel right to make the objection during the oral argument. At the close of the argument, when the objection was renewed, the judge denied the objection, stating it was "untimely and improper, and will be overruled." (156)

The trial court submitted the cases to the jury without any instruction either as to law or as to facts. He merely stated that while the cases were tried together, the jury would be required to render separate verdicts. (156) The jury returned separate verdicts, finding each appellant guilty. (1, 15)

Thereafter, motions for judgment notwithstanding the verdict and for a new trial, raising each one of the constitutional questions presented upon these appeals, were duly made. (5-7, 18-21) The motions were denied. (1, 5, 7, 19, 21)

Petitions for writs of certiorari were filed with and denied by the Court of Appeals of Maryland. (8-22, 156-160) Petitions for appeal, statements, assignments of error, prayers for reversal, and other papers upon the appeals, have been duly filed in this Court. (9-14, 23-28) Statements of points to be relied upon have been duly filed in this Court. (161-164)

Facts

Appellants were invited by the Havre de Grace congregation of Jehovah's witnesses to deliver public discourses on Bible subjects to assemblies in the public park at Havre de Grace on June 26, 1949, and July 3, 1949, respectively. (135, 140) They were visiting ministers to the congregation, residing outside of Havre de Grace. (134, 139)

The congregation of Jehovah's witnesses engages in door-to-door evangelistic work and also maintains a place of public worship at Havre de Grace. (93-94) Its preaching activity in Harford County is carried on under the direction

of Watchtower Bible and Tract Society of Brooklyn, New York, the legal governing body of Jehovah's witnesses. (93-94) The congregation planned a series of four public assemblies to be held in the public park at Havre de Grace during the summer season of the year which were free and open to the public. (95-96)

The application for permission to use the park for holding these open-air meetings was duly made to the City Council. (96) The application was in writing. (114-116) It was delivered to the Chairman of the Park and Harbor Commission, who was a member of the City Council. (31, 96-97, 105-106, 128) The application requested use of the park for four consecutive Sundays, June 12 to July 3, 1949. (115) Jehovah's witnesses did not make use of the park for the first Sunday of the series because they did not desire to interfere with flag day exercises held in the park on that date. (109)

During the discussion with the Chairman of the Park Commission, when it was agreed not to use the park on June 12, the Chairman stated that he objected to Jehovah's witnesses' using the park because there would be a mixed audience of white and colored in the park. He declared that it was contrary to the policy of Havre de Grace to allow mixed meetings in the park. (97-98) After they remonstrated with him, he gave Jehovah's witnesses the impression that the park would be available to them on the following Sundays of the series. (98)

He was asked later for a ruling on the application that had been made for permission to use the park. (98) He declared that the matter would have to be determined by the entire City Council. (98) In response to the statement that Jehovah's witnesses had a constitutional right to use the park, he stated "I'll be damned if you are. I will see that you do not get into the park." (98, 127)

Jehovah's witnesses then saw the Mayor about bringing the matter before the City Council. (99) The Mayor stated

that the people did not like colored and white mixed together in public meetings. (99) The spokesman for Jehovah's witnesses tried to explain that Jehovah's witnesses had no way to keep the colored away from the meetings, since all people or the public in Havre de Grace were invited to attend and that Jehovah's witnesses did not try to cause racial distinctions and racial hatreds, and that negroes had as much right to learn the truth as whites. (99) The Mayor said he did not believe that the time had yet arrived for the whites and colored to mix in public meetings. (99-100)

The Mayor insisted that Jehovah's witnesses were not entitled to use the park because of their unorthodox religious beliefs, dissentient attack upon orthodox religions and their refusal to salute the flag. (99-100) The Mayor requested Jehovah's witnesses not to hold any meetings in the park until after the City Council met on June 20, 1949, at which time the application would be determined, and Jehovah's witnesses agreed. (99, 112)

The hearing was had on June 20, 1949, at which members of the City Council denied the application because Jehovah's witnesses refused to salute the flag and failed to serve in the armed forces. (101-103, 111-120) At the hearing the City Council denied Jehovah's witnesses the right to give evidence and present legal reasons why they were entitled to use the park, notwithstanding their refusal to salute the flag and bear arms, and to present the Scriptural basis for such conscientious scruples. (120-121)

A complete stenographic report of the proceedings before the City Council was made. (124-132) The report was not received into evidence. (125, 132) The transcript of the stenographer's notes was used on cross-examination of the Mayor as to what took place at the meeting on June 20, 1949, and the Mayor admitted the correctness of the material parts of the transcript. (43)

At the meeting, Jehovah's witnesses called to the attention of the members orally and in a letter various decisions

by this Court and other courts sustaining their right to use the park. (122, 123) Among other things they said: "Inasmuch as Jehovah's witnesses are a duly recognized organization and have a message of great importance and comfort for all mankind, the Havre de Grace Company of Jehovah's witnesses request permission to use this city's park. The meetings proposed to be held in the park come within the guarantee of freedom of assembly and freedom of worship appearing in the constitutions of this State and the United States. We believe that a denial of permission to use the park as a place of assembly for public Bible talks would be a violation of our rights of freedom of speech, freedom of assembly and freedom of worship; contrary to the constitutions of this State and the United States of America. We also believe that a refusal of permission to make use of the park for such purpose, while allowing other organizations to use it, is not equal justice under the law; but is discriminatory and a denial of equal protection of the laws." (123-124)

The Mayor testified at the hearing on June 20, 1949, that he read the letter and the decisions of this Court presented by Jehovah's witnesses and that he did his duty as he saw it. He said: "When I am directed by an unanimous decision to do a certain thing, I am going to do it. By their vote, the Council directed me not to permit them to have these meetings in the City Park on the following Sundays. . . . I prohibited them holding a meeting in the City Park the following Sunday." (55)

The Mayor gave instructions to the Chief of Police that the meetings of Jehovah's witnesses must not be held. (57) Also he attempted to justify the denial of the permit and his order to the Chief of Police to prevent the holding of any meetings by Jehovah's witnesses in the park on the ground that it was necessary to protect Jehovah's witnesses from mob violence in the City of Havre de Grace. (57-58) This was based on a rumor that he heard, the source of which

he refused to disclose. (58-59) He instructed the Chief of Police that if Jehovah's witnesses attempted to use the park they were to be arrested. (60)

There is no ordinance of the city regulating the use of the park or requiring an application for a permit. (60) It was stipulated by the parties that "there is no ordinance of the City of Havre de Grace in that respect, or any regulation, which requires or provides for the issuance of any permit, or any application for one. As the matter now stands, there is no written and published order of the City of Havre de Grace requiring a permit to be obtained from the City Council for the use of the City Park, although the Mayor claims that the authority is vested in the City Council by the City Charter." (142) This stipulation was supported by the cross-examination of the Mayor. (59-60)

The appellant, Daniel Niemotko, an ordained minister of the gospel, resides at 124 Columbia Heights, Brooklyn, New York. He arrived at the public park at Havre de Grace for the purpose of delivering a public Bible discourse to the assembly there gathered shortly before 2 p.m. on June 26, 1949. (134-135) The audience was assembled in an appropriate place and in an orderly manner. (135-136) Niemotko had been informed of the refusal of the City Council to allow the meeting. (135-136) On arrival at the park he noticed a number of policemen in uniform, including the Chief of Police. (136) He attempted to convince the Chief that the action of the City Council and the proposed arrest for addressing the assembly were unlawful and unconstitutional. (70-71, 136) Niemotko informed the Chief that the talk would be delivered at the scheduled time. (70-71, 136) The Chief told appellants that if he attempted to give the talk he would be arrested. (70, 136)

The meeting began by Niemotko's starting his talk in an orderly manner. His language was proper; the tone of voice was not disturbing, loud or raucous. He spoke in a lawful manner before the assembly, according to the admission of

the Chief of Police and other officers. (75, 79, 82, 91) There was no invitation to do violence and there was no clear and present danger of violence or unlawful acts. (75, 79, 82, 91, 137) The conduct of the speaker was entirely appropriate and his sermon was based on the Bible. (75-76) Niemotko talked for ten or fifteen minutes. (136-137) Suddenly he was accosted by the Chief of Police, who placed him under arrest. (71, 137) Niemotko was taken into custody and held for several hours before his release. (137-138)

On the following Sunday, July 3, 1949, appellant Neil W. Kelley, an ordained minister of the gospel and a resident of Baltimore, arrived at the park at Havre de Grace shortly before two o'clock to deliver his Bible talk to the assembly. (139-140) The audience was assembled at an appropriate place and in an orderly manner in the park. (140) Kelley had been informed of the arrest of Niemotko the previous Sunday, but thought the trouble had been cleared up. (140) As Niemotko had noticed on the previous Sunday, Kelley on his arrival saw a number of policemen in the park among whom was the Chief of Police. (140) The Chief of Police asked to speak to Kelley and informed him that he had orders to arrest him if he spoke to the meeting. (71, 140) Kelley told the Chief that "he should guarantee us protection under the constitution." (140)

Kelley uttered only one sentence to his audience whereupon he was immediately arrested before his introduction was completed. (71, 75-76) He had just mentioned that he was going to discuss "The Two Great Commandments of Life", the greatest command of which was "Love thy neighbor", when the Chief placed him under arrest. (141) He was charged with disorderly conduct. (140-141)

The Chief of Police and all of the witnesses for the prosecution testified that there was no evidence of violence and there was no clear and present danger of any disturbance resulting from the attempt to deliver the public talks. All of the witnesses for the prosecution admitted that appel-

lants at all times conducted themselves with propriety and decorum. (76, 79, 82, 85, 88-89, 91) The Chief of Police stated that the only reason that appellants were arrested was that the assembly had been held and the talks attempted to be given to the assembly in the public park without a permit, after the City Council had denied the use of the park to Jehovah's witnesses. (77)

SUMMARY OF ARGUMENT

A municipal requirement which forbids the holding of a public assembly without a permit has been uniformly declared by this Court to be unconstitutional because it is an abridgment of freedom of assembly and of speech. *Hague* v. *C. I. O.*, 307 U. S. 496; *Schneider* v. *New Jersey*, 308 U. S. 147; *Largent* v. *Texas*, 318 U. S. 418; *Saia* v. *New York*, 334 U. S. 558. See also *Commonwealth* v. *Gilfedder*, 321 Mass. 335, 73 N. E. 2d 241, and *Jamison* v. *Texas*, 318 U. S. 413, distinguishing and making inapplicable *Davis* v. *Massachusetts*, 167 U. S. 43.

Since the municipal requirement of the City of Havre de Grace is itself unconstitutional, the imposition of the criminal sanctions of the disorderly conduct statute of Maryland, because the municipal requirement was not complied with, makes the disorderly conduct statute unconstitutional. *Marsh* v. *Alabama*, 326 U. S. 501, 510; *Tucker* v. *Texas*, 326 U. S. 517, 520; *Concordia Fire Insurance Co.* v. *Illinois*, 292 U. S. 535, 545.

The contention that the exercise of the right of free speech and free assembly in a public park can be denied because of threats of violence was definitely rejected by this Court in *Hague* v. *C. I. O.*, 307 U. S. 496. See also *Sellers* v. *Johnson*, 163 F. 2d 877 (C. A. 8, 1947), cert. denied 332 U. S. 851; *Terminiello* v. *City of Chicago*, 337 U. S. 1.

The holding of religious meetings in the public park of Havre de Grace does not constitute the appropriation of

public funds or the use of public property as a place of public worship in violation of the establishment clause of the First Amendment. The incidental use of a public street or public park by a sectarian religious group in common with all other types of assembly without appropriation of the public property, is so incidental and inconsequential as not to violate the Constitution. See *Everson* v. *Board of Education*, 330 U. S. 1.

McCollum v. *Board of Education*, 333 U. S. 203, is distinguishable because there the school machinery and public funds were directly employed to support religious education, which is precluded by the wall of separation between church and state erected by the authors of the First Amendment.

The incidental use of a public park by a sectarian group is analogous to the sectarian use of school auditoriums for religious meetings which has been held not to be forbidden by the wall of separation between church and state. *Nichols* v. *School Directors*, 93 Ill. 61 (1879).

ARGUMENT

ONE

The convictions of appellants for disorderly conduct based on refusal to comply with the requirement of the city of Havre de Grace that appellants obtain a permit before holding meetings and making Bible talks in the city park construe and apply the statute involved in such a manner as to abridge freedom of assembly, speech, conscience and worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution.

This Court has held that streets and parks have, from time immemorial, been held in trust by cities for the use of the public as places of assembly where speeches can be made and talks given, as well as literature distributed. *Hague* v.

C. I. O., 307 U. S. 496; *Schneider* v. *New Jersey*, 308 U. S. 147; *Jamison* v. *Texas*, 318 U. S. 413; *Saia* v. *New York*, 334 U. S. 558.

A custom, regulation, law or ordinance of a city or the state which requires a permit from any official, board or council as a condition precedent to holding an assembly, giving a talk or distributing literature in a public park or upon a public street is void. This was held in *Hague* v. *C. I. O.*, 307 U. S. 496; *Schneider* v. *New Jersey*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Largent* v. *Texas*, 318 U. S. 418; *Saia* v. *New York*, 334 U. S. 558; *Commonwealth* v. *Gilfedder*, 321 Mass. 335, 73 N. E. 2d 241; *Sellers* v. *Johnson*, 163 F. 2d 877. Outright prohibition by a law or ordinance of the use of the streets or the parks for the making of speeches, holding of assemblies or distribution of literature is void. *Jamison* v. *Texas*, 318 U. S. 413; *Thornhill* v. *Alabama*, 310 U. S. 88.

This Court has specifically stated that while a city may have the authority to regulate as to time, place and manner, it may not (under the claim that it is using the police power to regulate, or under the guise of regulation) abridge the rights guaranteed by the Constitution through the requirement of a permit as a condition precedent to the exercise of such rights. *Schneider* v. *New Jersey*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296.

In *Blue Island* v. *Kozul*, 379 Ill. 511, 51 N. E. 2d 515, a conviction under a city bylaw or regulation providing for the procuring of a license and the payment of a fee was set aside. The City of Blue Island argued that its ordinance was regulatory. "It is contended by the city that this is a regulatory ordinance. A municipality may enact regulations in the interests of public safety, health, welfare or convenience, within the limits permitted by law, but in every case this power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe that freedom protected by the United States Constitution and by the Constitution

of the State of Illinois. *Cantwell* v. *Connecticut, supra; Schneider* v. *Town of Irvington, supra.* The ordinance is not regulatory. As applied to the facts in this case, the ordinance makes no provision regulating the manner of carrying on the business of peddlers in the city of Blue Island."

It was contended by the appellee in the court below that appellants were guilty of disorderly conduct because they failed to bring an action for injunction or other civil relief which would subject the administrative determination by the City Council of Havre de Grace on the application for a permit to judicial review and redress before using the park which resulted in the prosecutions. The mere availability of a civil remedy does not deprive the person charged with disorderly conduct of the right to assert that the prosecution is unconstitutional or that the requirement of a permit is void, as a defense to the criminal proceedings. A similar argument was made by the State of Connecticut and rejected in *Cantwell* v. *Connecticut,* 310 U. S. 296, at pp. 305-306.

The appellee in the court below said that the meetings were prevented because it was the desire of Havre de Grace to avoid violence and bloodshed. No direct evidence of threatened violence, remote or immediate, was established by testimony. The Mayor relied on rumor which he refused to verify.

The argument that one may be forbidden the right to exercise his constitutional rights to freedom of speech, assembly, conscience and worship in a public park on the ground that it is necessary in order to preserve order, is specious. The false doctrine has been expressly rejected by

this Court. (*Hague* v. *C. I. O.*, 307 U. S. 496; *Terminiello* v. *City of Chicago*, 337 U. S. 1) The reply to such argument made by the appellee is plain. It is the duty of the City of Havre de Grace to preserve order, protect persons in the exercise of their civil liberties in public parks and promptly repress disorder by arresting those who attempt to do violence or interfere with the exercise of civil liberties. *Sellers* v. *Johnson*, 163 F. 2d 877 (C. A. 8, 1947).

The judgments of the Circuit Court for Harford County, therefore, are out of harmony with and in conflict with the decisions of this Court in *Hague* v. *C. I. O.*, 307 U. S. 496; *Saia* v. *New York*, 334 U. S. 558; *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *New Jersey*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Largent* v. *Texas*, 318 U. S. 418; *Terminiello* v. *City of Chicago*, 337 U. S. 1.

The action of the City of Havre de Grace and the judgments of the Circuit Court for Harford County can be no better described than was done by Mr. Justice Markell of the Court of Appeals of Maryland. He declared that the appellants' "rights under the Constitution of the United States of freedom of worship, freedom of speech and freedom of assembly have been wantonly violated and completely flouted by the municipality of Havre de Grace and by the circuit court." (160).

The holding of the Circuit Court for Harford County that the action of the City of Havre de Grace in excluding appellants from the park and arresting them for giving speeches and holding meetings in the park without a permit is plainly erroneous and conflicts with previous decisions of this Court in such a manner as to require a reversal of the judgments of the court below.

TWO

The wall of separation of church and state contained in the establishment clause of the First Amendment does not preclude appellants from using the public park to hold public meetings and delivering sermons to their audiences.

The principle of separation of church and state that is supported by the establishment clause of the First Amendment is confined to direct financial aid to religious organizations in the fostering of their principles. The state is precluded from making grants of money or state aid either directly or indirectly to help foster the principles of a religious organization or maintain it. The state is precluded from appropriating any of its public property and devoting it exclusively to use of a religious organization.

The holding of this Court in *McCollum* v. *Board of Education,* 333 U. S. 203, does not support the position that public parks may not be used as places of public religious assembly by churches and sectarian groups. The decision in the *McCollum* case is not authority against the use of the public parks by appellants. The decision in that case outlawed completely the use of school time and the course of instruction in the public schools given to children as a result of the compulsory education law to teach religious doctrines, creeds and principles. The operation of the state's compulsory education system was found to assist religious instruction carried on by separate religious sects. The situation presented here is "beyond all question [*not*] a utilization of the tax-supported public [property] to aid religious groups to spread their faith." 333 U. S. 203, at page 210.

That the decision in that case was grounded upon and limited to the fact that the use of the property for such instruction became unconstitutional because it was, in effect, a part of the school program, is proved by the opinion of Mr. Justice Frankfurter. He said: "Religious education so

conducted on school time and property is patently woven into the working scheme of the school. The Champaign arrangement thus presents powerful elements of inherent pressure by the school system in the interest of religious sects. . . . The result is an obvious pressure upon children to attend." 333 U. S. at p. 227.

The issue in the *McCollum* case was limited to the precise problem of utilization of the compulsory education process and school system for religious training. It was not based upon the proposition that public property cannot be used for the exercise of constitutional rights by religious bodies. If the Court so held it would have so stated explicitly.

The *McCollum* case is not controlling here. If a public park dedicated by law and regulation to community purposes by the City of Havre de Grace cannot be so used by a religious group, then by force of the same reason, the public streets could be kept back from use by such religious group. The doctrine of separation of church and state ordained in the First Amendment must not be distorted so as to itself become an abridgment of liberty. If public streets cannot be withheld from religious organizations for exercise of their constitutional rights of free speech, then by force of the same reason public parks, that are open for community meetings, may not be denied to such groups for public meeting purposes.

The argument that the use of the public park for the public meeting and the delivery of the talk, which constitutes religious service and demonstration, is appropriation of public funds, is such a slight and inconsequential appropriation as to be unworthy of notice.

The Court is referred to many cases involving the use of public schools for religious assemblies. In the decisions, various state courts have held that the slight and incidental use of the school for religious assemblies at times when the school buildings are not used for school purposes is not sectarian use in violation of the Constitution. These hold-

ings were made in decisions rendered prior to the passage of the "Civic Center Acts", which permitted the use of the schools for such purposes throughout the country. See *Nichols* v. *School Directors*, 93 Ill. 61 (1879); *School Directors* v. *Toll*, 149 Ill. App. 541 (1909); *Hurd* v. *Walters*, 48 Ind. 148 (1874); *Baggerly* v. *Lee*, 37 Ind. App. 139, 73 N. E. 921 (1905); *Townsend* v. *Hagan*, 35 Iowa 194 (1872); *Davis* v. *Boget*, 50 Iowa 11 (1878); *Gibbert* v. *Dilley*, 95 Neb. 527, 145 N. W. 999 (1914); *Greenbanks* v. *Bantwell*, 43 Vt. 207 (1870); *Lagow* v. *Hill*, 238 Ill. 428, 87 N. W. 369 (1909).

This Court has held that the guaranty of freedom of worship that is to be found in the First Amendment to the Constitution of the United States gives the right to Jehovah's witnesses to carry on their religious service on the public streets. In the many cases that have been before this Court the facts made the bases of the convictions that were reversed showed that Jehovah's witnesses were conducting religious services. They were preaching the gospel on the public streets. In each case they preached the gospel by means of the printed page rather than by speech. The sermons were printed in pamphlet and book form and distributed upon the public streets. This Court found such to be preaching, public worship, public religious service and public religious demonstration. *Murdock* v. *Pennsylvania*, 319 U. S. 105, 108-109, 110.

In the *Murdock* case the public worship, religious service and religious demonstrations were carried on from door to door by Jehovah's witnesses. The fact that such religious service was from door to door, rather than upon the public streets, is of no consequence. The case cannot be distinguished. In fact the Constitution guarantees the right to carry on religious service on the public streets as well as from door to door. This was the holding in *Jamison* v. *Texas*, 318 U. S. 413; *Busey* v. *District of Columbia*, 319 U. S. 579; (mandate of this Court executed at 78 App. D. C. 189, 138

F. 2d 592). Cf. *Cantwell* v. *Connecticut*, 309 U. S. 626; *Marsh* v. *Alabama*, 326 U. S. 501.

In the decisions just referred to, the sermons given by Jehovah's witnesses were in printed form, magazines, pamphlets and books, upon the public streets. That the sermons delivered by Jehovah's witnesses were printed rather than vocalized does not make any difference. This distribution of printed sermons constituted a religious service and a religious demonstration, which was protected against abridgment by the First and Fourteenth Amendments, according to the holdings of this Court in those cases.

The Court has gone further, moreover, and even held that religious demonstrations in a public park by Jehovah's witnesses are similarly protected against abridgment under the First and Fourteenth Amendments. In *Saia* v. *New York*, 334 U. S. 558, an assembly and speech almost identical to this was involved. The ordinance forbidding the use of sound device in the holding of public meetings of any kind in the public park without a permit was held by this Court to be void as construed and applied to the facts and circumstances of the case. The assembly was a religious service by Jehovah's witnesses in a public park. The religious demonstration by Jehovah's witnesses was protected against the enforcement of the ordinance. See also *Sellers* v. *Johnson*, 163 F. 2d 877 (C. A. 8, 1947) The *Sellers* case involved the holding of a religious service in a public park. The Court of Appeals held that the Constitutions protected the use of the park by Jehovah's witnesses against efforts of the officials to prevent such religious service.

If the doctrine of separation of church and state, which is implicit in the First Amendment, forbids the holding of religious service and putting on religious demonstrations on public streets and in public parks, it seems strange that this Court did not consider such sophisticated doctrine in the following cases: *Lovell* v. *City of Griffin*, 303 U. S. 444; *Schneider* v. *New Jersey*, 308 U. S. 147; *Cantwell* v. *Con-*

necticut, 310 U. S. 296; *Jamison* v. *Texas,* 318 U. S. 413; *Largent* v. *Texas,* 318 U. S. 418; *Murdock* v. *Pennsylvania,* 319 U. S. 105; *Jones* v. *Opelika,* 319 U. S. 103; *Martin* v. *Struthers,* 319 U. S. 141; *Taylor* v. *Mississippi,* 319 U. S. 583; *Busey* v. *District of Columbia,* 319 U. S. 579; *West Virginia State Board of Education* v. *Barnette,* 319 U. S. 624; *Follett* v. *McCormick,* 321 U. S. 573; *Marsh* v. *Alabama,* 326 U. S. 501; *Tucker* v. *Texas,* 326 U. S. 517; *Saia* v. *New York,* 334 U. S. 558.

It would be incongruous and paradoxical indeed to say that the Constitution guarantees freedom of worship and freedom of conscience and at the same time forbids religious service and religious demonstrations in public places.

The United States Constitution guarantees freedom of assembly. No exception of religious assembly was written into the Constitution. If the framers of the Constitution intended to exempt religious assembly from the protection written into the First Amendment, they would have written the exemption into the Amendment. It is absolutely not permitted for a state, county or city, or their officials, executive, legislative or judicial, to amend the First Amendment by writing into it an exemption or exception which does not appear in the plain language contained in the Amendment. If the freedom-of-assembly guaranty in the First Amendment makes secure the right to hold meetings of other kinds in a public park, it likewise makes secure the right to hold religious meetings therein.

The doctrine of separation of church and state ought properly to be limited to the boundaries fixed by the framers of the First Amendment. What the authors of the Amendment had in mind was the prohibition of a state church; they intended to exclude any religion from being aided or supported by public funds. The authors of the Amendment did not intend to exclude religion from the benefits of the Constitution. In fact, it has been declared that religion occupies a favored position in the law.

Religious services and religious demonstrations bear burdens that would ordinarily fall directly upon the government. Were it not for their being available the general public would be required to establish welfare institutions and kindred agencies and services. Thus the government would be required to impose additional taxes and make a heavier demand upon the manpower of the nation. The Christian preaching of the gospel and religious services rendered enjoins upon the people of good will an obligation to conduct themselves uprightly and to be obedient to all proper law. The contribution to the government through the benefits received by the people from the preaching activity of ministers of religion through their religious services and religious demonstrations cannot be equaled by the government were it to undertake such activity. The charitable activities of ministers of the gospel "constitute not only the 'cheap defense of nations' but furnish a sure basis on which the fabric of civil society can rest, and without which it could not endure." *Trustees of First M. E. Church South* v. *Atlanta,* 76 Ga. 181, 192; *M. E. Church South* v. *Hinton,* 92 Tenn. 188, 190, 21 S. W. 321, 322; *People* v. *Barber,* 42 Hun (N.Y.) 27; *Commonwealth* v. *Y. M. C. A.,* 116 Ky. 711, 76 S. W. 522.

Uniformly the courts have held that a broad and liberal interpretation should be placed upon the provisions of the various statutes, granting favors to religious organizations. *Trinidad* v. *Sagrada, etc.,* 263 U. S. 578; *Helvering* v. *Bliss,* 293 U. S. 144.

It would be unreasonable to suppose or to contend that the framers of the First Amendment had in mind discriminating against the religious organizations in holding public assemblies. The interpretation of the First Amendment contended for by the City of Havre de Grace requires this Court

to discriminate against religious assemblies in favor of all other types of assemblies. This Court cannot write into the First Amendment a discrimination against religious assemblies under the guise of the sophisticated doctrine advanced by the City of Havre de Grace which is an unlawful stretching of the principle of the separation of church and state. A factitious conclusion would be reached by so doing, which is forbidden by the Constitution. Indeed the Court would be discriminating against the religious organizations and misinterpreting the guaranty of freedom of assembly appearing in the First Amendment.

There has been no appropriation of the public park by Jehovah's witnesses. They have not excluded other organizations from the use of the park. Their use of the park is only incidental and synchronizes with the use of the park by all others in Havre de Grace for recreational and other purposes. The so-called "appropriation of public funds" by use of the park by the holding of religious services is so slight and inconsequential and incidental as to be unworthy of notice by this Court in considering the so-called applicability of the doctrine of separation of church and state.

It is respectfully submitted that the proper holding of this Court should be that religious assemblies stand on the same strong basis under the First Amendment as do assemblies by any other group for any other purpose in a public park.

This Court should hold that the use of the park for a religious service is proper and within the strong protecting shield of the First Amendment.

The Court should hold and conclude that the establishment clause of the First Amendment does not preclude appellants from using the public park to hold public meetings and delivering Bible sermons to their audiences.

CONCLUSION

For the reasons stated, the judgments below should be reversed and the prosecutions ordered dismissed.

Respectfully submitted,

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Dated, July 1, 1950.

Supreme Court of the United States

OCTOBER TERM, 1950

No. 17

DANIEL NIEMOTKO, *Appellant*

vs.

STATE OF MARYLAND

No. 18

NEIL W. KELLEY, *Appellant*

vs.

STATE OF MARYLAND

APPEALS FROM CIRCUIT COURT FOR
HARFORD COUNTY, STATE OF MARYLAND

REPLY BRIEF FOR APPELLANTS

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MAY IT PLEASE THE COURT:

The appellee suggests to the Court that *Murdock* v. *Pennsylvania*, 319 U. S. 105, and *Jones* v. *Opelika*, 319 U. S.

103, be overruled. This Court is requested to reinstate its original decision which was reversed on rehearing. *Jones* v. *Opelika*, 316 U. S. 584. The *Murdock* case was correctly decided and has been followed in later cases by this Court as well as by the state courts in over fifty different cases. If the *Murdock* case is reconsidered then it would require a reconsideration of all the civil liberties cases, beginning with *Lovell* v. *Griffin*, 303 U. S. 444, and ending with *Saia* v. *New York*, 334 U. S. 558. No factors, reasons or other considerations can be advanced why the *Murdock* case should be reopened and set aside and the old original decision in *Jones* v. *Opelika*, 316 U. S. 584, reinstated. See the concurring opinion by Mr. Justice Reed, the author of the original *Jones* decision, in *Follett* v. *McCormick*, 321 U. S. 573.

The decisions of this Court which involve the issuance of a permit as a condition precedent to the exercise of freedom of press, speech and worship while not directly in point do involve censorship vice that is complained of in the ordinance here. Appellee says that because the exercise of such rights was upon the public streets and not in the parks, which are involved here, they are not in point. See *Jamison* v. *Texas*, 318 U. S. 413; *Saia* v. *New York*, 334 U. S. 558; compare *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *New Jersey*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Largent* v. *Texas*, 318 U. S. 418; *Marsh* v. *Alabama*, 326 U. S. 501. The contention urged by the appellee that a religious organization does not have a constitutional right to exercise free speech, free press and free assembly in the public parks necessarily involves a reconsideration of all the above decisions. It is only in the event that this Court reaches the conclusion that the dictum of the case of *McCollum* v. *Board of Education*, 333 U. S. 203, is applicable to this case that it becomes necessary to reconsider the above cases.

No reason whatever can be shown why this Court should

reconsider all of the foregoing decisions in cases involving Jehovah's witnesses and set them aside, save and except that there has been a change in the personnel of this Court and that such decisions are adverse to the position advanced by the appellee.

The Court is directed to the language of Mr. Justice Frankfurter, in *United States* v. *Rabinowitz*, 70 S. Ct. 430, where he said, at page 444, among other things: "These are not outmoded decisions eroded by time. Even under normal circumstances, the Court ought not to overrule such a series of decisions where no mischief flowing from them has been made manifest. Respect for continuity in law, where reasons for change are wanting, alone requires adherence to Trupiano and the other decisions. Especially ought the Court not reenforce needlessly the instability of our day by giving fair ground for the belief that Law is the expression of chance—for instance, of unexpected changes in the Court's composition and the contingencies in the choice of successors."

The appellee says that it is necessary to limit the constitutional guarantee of freedom of assembly so as to exclude religious organizations from the public parks. It is contended that if this is done the parks will become glorified camp meeting places in violation of the doctrine of separation of church and state that is to be found in the First Amendment to the Constitution of the United States. The position taken by the appellee is an extreme one. The evil of parks' becoming camp meeting places to the exclusion of all other uses can easily be prevented by regulation. The state has the authority to regulate as to time and place. *Schneider* v. *New Jersey*, 308 U. S. 147. A regulatory law as to the time and place that parks may be used for religious assemblies would take care of this anticipated evil. The sophisticated and extreme position taken by the appellee that the threatened evil warrants prohibition and censorship is contrary to settled principles announced by

this Court. To resort to prohibition or censorship as a means of regulation is an abridgment of freedom of assembly under the guise of regulation.

The First Amendment guarantees freedom of assembly to all persons of all organizations. The authors of the Constitution did not say in the First Amendment that there was freedom of assembly for all "except for religious organizations". When the writers of the Constitution incorporated the doctrine of separation of church and state they were familiar with the evils of the state church. The evil that they were contending with and had in mind to prevent in incorporating the doctrine of separation of church and state in the First Amendment certainly was not for the purpose of prohibiting a preacher or a church from exercising its rights of civil liberties on public property. The evil that they experienced did not come from the exercise of freedom of speech or freedom of assembly by a religious organization. What they were aiming to proscribe by the First Amendment was the state church, taxation for the support of religious organizations and the appropriation of state funds and state property for the use of religious organizations.

The authors of the Constitution certainly did not consider that the incidental use of public property for the purpose of exercising civil liberties along with the rest of the people by religious organizations came within the prohibition of the separation of church and state doctrine. They undoubtedly had in mind the existence of the de minimis theory which made permissible religious use of public property. See the cases cited on pages 19 and 20 of Joint Brief for Appellants. See also *Everson* v. *Board of Education*, 330 U. S. 1, which held that incidental and inconsequential benefit received by religious organizations from the use of public funds is without the prohibition of the First Amendment.

It has been uniformly held by the state courts that tax

exemption of religious organizations, as provided for in state constitutions, is not unconstitutional. The subsidizing of religious organizations by tax exemption has never been held by this Court to be unconstitutional. In fact this Court has sustained the Acts of Congress granting privileges to religious organizations and charitable societies. See *Frothingham* v. *Mellon,* 262 U. S. 447; D. C. Code § 32-811 (1940). If this Court is to hold that religious organizations are forbidden to make use of the public parks, then by force of the same reason it must be concluded that the granting of tax exemption is a violation of the doctrine of separation of church and state. This the framers of the Constitution did not intend. The conclusion advocated by the appellee is not supported by the Constitution.

The appellee argues that the public parks are places of recreation. It contends that they should be preserved inviolate as places of solitude and quietness. It contends that the parks may not be used for the exercise of civil liberties because such use interferes with the quietude of those in the park seeking recreation. This contention advocated by the appellee is in collision with the statement of this Court in *Hague* v. *C. I. O.,* 307 U. S. 496, and *Jamison* v. *Texas,* 318 U. S. 413, that the public streets and public parks have been used from time immemorial as places of public assembly and as forums for the exercise of freedom of speech, freedom of press and freedom of worship. The right to use the public parks as places of public assembly is, of course, not absolute. They must be used in accommodation to recreational use of the park. The balancing and co-ordination of all permissible uses of public parks must be done by regulation as to time, place and manner so as to avoid conflict. This regulation is done *by law.* Such use of public parks may not be regulated by prohibition or censorship.

The appellee says that Jehovah's witnesses have the constitutional right to carry on their activities and exercise

their right of freedom of worship on the public streets. The appellee makes a distinction between the public streets and the public parks. It says that the state may not constitutionally proscribe the activities of religious organizations on the streets but that it may do so in the parks. This is a distinction without a difference. The public streets are as much public property as are the parks. If it is constitutional to carry on this type of activity on the streets, then it must be, by force of the same reason, permissible in the public parks. The distinction that appellee makes between parks and streets is a distinction without a difference.

The doctrine advocated by the appellee would drive religious organizations from under the protecting shield of the First Amendment insofar as the exercise of such activities on the streets and public parks is concerned. Appellants admit that the rights guaranteed by the First Amendment are not unlimited. The exercise of such rights is subject to reasonable police powers in the form of regulation as to time, place and manner of exercise. Such fundamental liberties are also subject to the laws prohibiting abuse of exercise of such rights. Freedom of speech and freedom of press do not make immune libel or slander. They are abuses of the right of free speech and free press. Freedom of assembly does not justify advocacy of illegal overthrow of the government. That is an abuse of freedom of assembly. It does not guarantee unlawful incitation of violence and breach of the peace. That is also an abuse. Such abuses are within the prohibition of the police power permitted by the First Amendment. Such abuses must be dealt with by narrowly designed laws dealing with the abuse. So also must be regulation. It can not be left to the uncontrolled discretion of the public officials. It must be by written law. Censorship of the exercise of the right of free speech, free assembly and free worship is not regulation. *Yick Wo* v. *Hopkins,* 118 U. S. 356.

The appellee relies on *Kovacs* v. *Cooper,* 336 U. S. 77.

That decision is not in point. it may not be relied upon as authority here. That decision did not validate censorship laws. It did not weaken or upset in any way *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *New Jersey*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; and *Largent* v. *Texas*, 318 U. S. 418. The decision did not water down completely *Saia* v. *New York*, 334 U. S. 558. The *Kovacs* case dealt solely with the abuse of the exercise of the right of free speech. The decision was that the state could prohibit completely loud and raucous noises emitting from a sound device. The decision went no further. It is in keeping with the exercise of the police power of the state to prohibit the abuse of free speech. The decision does not control here. There is no abuse of the exercise of free speech here. There is no abuse of the right of freedom of assembly established in this case.

The appellee says that the decision in the *Hague* case involved a prohibition of the exercise of civil liberties upon the public streets of Jersey City (*Hague* v. *C. I. O.*, 307 U. S. 496). A reading of the opinions in that case shows clearly that the controversy involved the right of assembly in the public parks. In fact a law identical to those requiring a permit precedent to holding an assembly or giving a talk in a public park was declared invalid in *Hague* v. *C. I. O.* See Note 1 of Mr. Justice Roberts' opinion, 307 U. S. 502.

The appellee relies upon the decision of this Court in *Davis* v. *Massachusetts*, 167 U. S. 43. A reconsideration of the *Davis* case is necessary. A discussion of the *Davis* decision was made by this Court in *Hague* v. *C. I. O.*, 307 U. S. 496. The decision of the Court in *Hague* v. *C. I. O.* devitalizes the old holding of *Davis* v. *Massachusetts*, 167 U. S. 43. The later opinion of this Court in *Jamison* v. *Texas*, 318 U. S. 413, announced principles administering the coup de grace to the *Davis* decision. The *Davis* case was dying after the decision of the Court in *Hague* v. *C. I. O.*, 307

U. S. 496, rendered in 1938. The *Davis* decision was dead since the decision of this Court in *Jamison* v. *Texas*, 318 U. S. 413. It is now time to put the *Davis* case to rest and extirpate it from the body of the law. It stands as a mar to the symmetry of the law of civil liberties. A similar conclusion has been reached by the Supreme Judicial Court of Massachusetts which sired the *Davis* case. (140 Mass. 485 and 162 Mass. 510) In *Commonwealth of Massachusetts* v. *Gilfedder*, 321 Mass. 335, 73 N. E. 2d 241, the Supreme Judicial Court of Massachusetts said:

"A series of recent decisions by the Supreme Court of the United States has, as we read the cases, established the proposition that the exercise of these rights cannot be wholly precluded in public places such as streets and parks by sweeping general prohibitions and cannot be subjected to the requirement of permits the granting of which is not governed by binding rules adequate to insure the exercise of the rights under reasonable conditions. Perhaps the most completely in point of these decisions are *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496, *Schneider* v. *State*, 308 U. S. 147 (reversing *Commonwealth* v. *Nichols*, 301 Mass. 584), *Jamison* v. *Texas*, 318 U. S. 413, *Marsh* v. *Alabama*, 326 U. S. 501, and *Tucker* v. *Texas*, 326 U. S. 517. Pertinent also in some aspects are *Lovell* v. *Griffin*, 303 U. S. 444, *Thornhill* v. *Alabama*, 310 U. S. 88, *Carlson* v. *California*, 310 U. S. 106, *Cantwell* v. *Connecticut*, 310 U. S. 296, *Largent* v. *Texas*, 318 U. S. 418, *Murdock* v. *Pennsylvania*, 319 U. S. 105, *Martin* v. *Struthers*, 319 U. S. 141, and *Thomas* v. *Collins*, 323 U. S. 516. Some of these decisions relate to the distribution of printed matter in streets and ways, but it seems plain that in respect to general principles no distinction can be drawn between the right to distribute printed matter and the right of public speech or between the exercise of those rights in public streets and their exercise in public parks. The reasoning of the

decisions is applicable to both rights and to public places in general. . . .

"The Commonwealth presses upon us the cases of *Commonwealth* v. *Davis*, 140 Mass. 485, and *Commonwealth* v. *Davis*, 162 Mass. 510 (affirmed sub nomine *Davis* v. *Massachusetts*, 167 U. S. 43), and asks us to follow these decisions, while the defendants ask us to overrule them. These cases also turned upon the validity of ordinances forbidding public addresses upon Boston Common without a permit. We confess to difficulty in reconciling the present decision with the decisions in the *Davis* cases. Nevertheless, we feel compelled to the result now reached by the broad sweep of principles set forth in great amplitude in more recent decisions of the Supreme Court of the United States. That court in *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496, at page 515, while seemingly doubting *Davis* v. *Massachusetts*, 167 U. S. 43, nevertheless distinguishes that case on the ground, as we understand the opinion, that the ordinance in the *Davis* case was not directed solely at the exercise of the rights of speech and assembly, but was addressed as well to other activities that could constitutionally be prohibited. That may also be true in the present cases. Again, in *Jamison* v. *Texas*, 318 U. S. 413, 415-416, *Davis* v. *Massachusetts* was mentioned but was neither followed nor expressly overruled. We are not sure that we fully comprehend the ground on which *Davis* v. *Massachusetts* has been distinguished by the Supreme Court of the United States in the later cases, but we do not feel called upon expressly to overrule either of the cases of *Commonwealth* v. *Davis* as long as *Davis* v. *Massachusetts* appears to stand."

It is respectfully submitted that *Davis* v. *Massachusetts*,

167 U. S. 43, should be overruled and that the judgment of the court below should be reversed and the prosecutions dismissed.

Respectfully submitted,

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Counsel for Appellants

Dated, October 13, 1950.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. [redacted] 17

DANIEL NIEMOTKO,

Appellant,

vs.

STATE OF MARYLAND,

Appellee.

No. [redacted] 18

NEIL W. KELLEY,

Appellant,

vs.

STATE OF MARYLAND,

Appellee.

APPEALS FROM CIRCUIT COURT FOR HARFORD COUNTY
STATE OF MARYLAND

JOINT BRIEF FOR APPELLEE

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The Daily Record Co., Baltimore 3, Md.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 599

DANIEL NIEMOTKO,

Appellant,

vs.

STATE OF MARYLAND,

Appellee.

No. 600

NEIL W. KELLEY,

Appellant,

vs.

STATE OF MARYLAND,

Appellee.

APPEALS FROM CIRCUIT COURT FOR HARFORD COUNTY
STATE OF MARYLAND

JOINT BRIEF FOR APPELLEE

STATEMENT OF THE CASE

These two cases are appeals from judgments of conviction by the Circuit Court for Harford County, Maryland. Appellants were charged with disturbance of the public peace under the Annotated Code of Maryland (1947 Supplement), Article 27 Section 131. Appellants were tried, in the first instance, before a Trial Magistrate for Harford

County and were found guilty. They appealed to the Circuit Court for Harford County and, in a joint trial *de novo*, before a jury, were again found guilty. Appellant Niemotko was sentenced to pay a fine of $25.00 and costs. Appellant Kelley was sentenced to pay a fine of $50.00 and costs.

Pursuant to the provisions of the Annotated Code of Maryland (1939 Edition), Article 5, Section 104, each of the Appellants petitioned the Court of Appeals of Maryland for a writ of certiorari in an attempt to have that Court pass upon the case. In each instance the Petition was refused (156-161).* Thereupon, Appellants noted appeals, as indicated above, to this Court.

JURISDICTION

Appellee raises no question concerning the jurisdiction of this Court to entertain these appeals.

QUESTIONS PRESENTED

Appellants, at page 3 of their brief, set forth three questions which they wish this Court to consider. As the legal problems presented by Appellants' questions I and II are, for all practical purposes, the same, they will be hereinafter discussed under the following heading:

I.

Were Appellants deprived of their rights to freedom of assembly, speech, or religion, contrary to the provisions of the First and Fourteenth Amendments to the Constitution of the United States?

Appellants' question III will be hereinafter discussed under the following caption:

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* References, unless otherwise noted, are to the printed Transcript of Record filed in this case.

II.

Was the use by Appellants of a public park in the City of Havre de Grace, Harford County, Maryland, for the purpose of holding public meetings and delivering sermons precluded because such use of public property violates the principle of separation of Church and State, set forth in the First Amendment to the Constitution of the United States?

STATEMENT OF THE FACTS

The statement of the "Nature and History of the Action" and of the "Facts" set forth at pages 6 to 13 of Appellants' brief is substantially correct. The following, however, should be added to such statement:

At a meeting of the City Council of Havre de Grace, Harford County, Maryland, held at 8.30 P. M. on June 20, 1949, the following were present: Mr. Lawder, Mayor and Chairman of the Council, and Messrs. Kimble, Barrett, Spragg, McLhinney, Green and Hollohan, members of the Council, and Mr. Warfel, City Clerk. Members of Jehovah's Witnesses present at the meeting were Messrs. Laupert, Richter, Hopkins, Messerman and Miss Daisy W. Clarke, who recorded the minutes of the meeting a the request of the Jehovah's Witnesses (124-126).

Mr. Laupert stated (129): "You know there are 256 denominations and about 700 800 faiths, each with their own form of worship."

Mr. Laupert also stated (130): "I believe that the park belongs to the taxpayers and not to the City."

Mr. Hollohan, in addition to being a member of the Council, was Chairman of the Park and Harbor Commission of the Council (31). At the end of the meeting, Mr. Hollohan made the following motion: "I make the motion

that the use of the park by Jehovah's Witnesses be denied". This motion was seconded by Mr. Spragg. Upon a call for the question—"The Chairman then took the vote and it was unanimously agreed that the use of the park should be denied to Jehovah's Witnesses, each saying 'nay' in turn" (131).

Although at page 9 of their brief, Appellants assert that the City Council, at the hearing referred to above, denied Jehovah's Witnesses the right to give evidence and present legal reasons why they were entitled to use the park, nevertheless, such legal reasons were set forth in a letter, dated June 20, 1949, written and delivered to the Mayor and City Council (123-124).

SUMMARY OF ARGUMENT

"Even the fundamental rights of the Bill of Rights are not absolute." *Kovacs v. Cooper*, 336 U. S. 77, 85-86, 93 L. ed. 513, 521-522; *Saia v. New York*, 334 U. S. 558, 562, 92 L. ed. 1574, 1578; *Robertson v. Baldwin*, 165 U. S. 275, 281, 41 L. ed. 715, 717; *Schenck v. U. S.*, 249 U. S. 47, 52, 63 L. ed. 470, 473.

"The hours and place of public discussion can be controlled." Reasonable regulations to establish such controls may be adopted. *Kovacs v. Cooper, supra; Saia v. New York, supra.*

A resolution duly adopted by the Mayor and City Council of a municipality, which refuses the request of a religious sect for permission to use a public park for a religious meeting is such a reasonable regulation. The action of the public officials of the City of Havre de Grace, Harford County, Maryland, in this case, was reasonable and did not abridge Appellants' rights to freedom of speech or peacably to assemble or to free exercise of religion. *Davis v. Massa-*

chusetts, 167 U. S. 43, 47-48, 42 L. ed. 71, 72; *Kovacs v. Cooper, supra.* If there are any decisions of this Court to the contrary, and it is respectfully submitted that there are none, they should be reversed.

The public park in the City of Havre de Grace, Harford County, Maryland, which Appellants sought to use for religious meetings of the sect known as Jehovah's Witnesses was the property of the City. It was purchased with and maintained by funds of the City, derived from taxes imposed upon the taxpayers resident within the City. To permit the Jehovah's Witnesses to use the park for religious services of their sect would constitute either a preference of one religion over another or part of a plan of impartial governmental assistance of all religions, either of which comes within the ban of the "establishment of religion" clause of the First Amendment of the Constitution of the United States.' *State v. Illinois, ex rel. McCollum v. Board of Education*, 333 U. S. 203, 209-211, 92 L. ed. 649, 658-659.

ARGUMENT

I.

WERE APPELLANTS DEPRIVED OF THEIR RIGHTS TO FREEDOM OF ASSEMBLY, SPEECH, OR RELIGION, CONTRARY TO THE PROVISIONS OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES?

This Court on a number of occasions has held that the fundamental rights guaranteed by the Constitution are not absolute. In *Robertson v. Baldwin*, 165 U. S. 275, 281, 41 L. ed. 715, 717, this Court said:

> "* * * The law is perfectly well settled that the first ten Amendments to the Constitution, commonly known as the Bill of Rights, were not intended to lay down any novel principles of government, but simply to embody certain guaranties and immunities which we had inherited from our English ancestors, and which had

from time immemorial been subject to certain well-recognized exceptions arising from the necessities of the case. In incorporating these principles into the fundamental law there was no intention of disregarding the exceptions, which continued to be recognized as if they had been formally expressed. Thus, the freedom of speech and of the press (art. 1) does not permit the publication of libels, blasphemous or indecent articles, or other publications injurious to public morals or private reputation; the right of the people to keep and bear arms (art. 2) is not infringed by laws prohibiting the carrying of concealed weapons; the provision that no person shall be twice put in jeopardy (art. 5) does not prevent a second trial, if upon the first trial the jury failed to agree, or if the verdict was set aside upon the defendant's motion (*United States v. Ball*, 163 U. S. 662, 672; 41 L. ed. 300, 303); nor does the provision of the same article that no one shall be a witness against himself impair his obligation to testify, if a prosecution against him be barred by the lapse of time, a pardon, or by statutory enactment. *Brown v. Walker*, 161 U. S. 519; 49 L. Ed. 819; and cases cited. Nor does the provision that an accused person shall be confronted with the witnesses against him prevent the admission of dying declarations, or the deposition of witnesses who have died since the former trial."

Again in the case of *Schenck v. United States*, 249 U. S. 47, 52, 63 L. ed. 470, 473, this Court, through Mr. Justice Holmes, stated:

> "* * * The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre, and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force."

This rule has been reiterated by this Court as recently as the decisions in *Saia v. New York*, 334 U. S. 558, 562,

92 L. ed. 1574, 1578, and *Kovacs v. Cooper*, 336 U. S. 77, 85-86, 93 L. ed. 513, 521-522.

In the case of *Carpenters & Joiners Union v. Ritter's Cafe*, 315 U. S. 722, 725-726, 86 L. ed. 1143, 1146-1147, this Court, speaking through Mr. Justice Frankfurter, said:

> "The constitutional right to communicate peaceably to the public the facts of a legitimate dispute is not lost merely because a labor dispute is involved, * * * or because the communication takes the form of picketing * * *. But the circumstance that a labor dispute is the occasion of exercising freedom of expression does not give that freedom any greater constitutional sanction or render it completely inviolable. * * *
>
> "Where, as here, claims on behalf of free speech are met with claims on behalf of the authority of the state to impose reasonable regulations for the protection of the community as a whole, the duty of this Court is plain. Whenever state action is challenged as a denial of 'liberty', the question always is whether the state has violated 'the essential attributes of that liberty.' Mr. Chief Justice Hughes in Near v. Minnesota, 283 U. S. 697, 708, 75 L. ed. 1357, 1363, 51 S. Ct. 625. While the right of free speech is embodied in the liberty safeguarded by the Due Process Clause that Clause postulates the authority of the states to translate into law local policies 'to promote the health, safety, morals and general welfare of its people. * * * The limits of this sovereign power must always be determined with appropriate regard to the particular subject of its exercise.' Id. 283 U. S. at 707, 75 L. ed. 1363, 51 S. Ct. 625. 'The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that *concrete case* falls on the nearer or farther side'.". (Emphasis supplied.)

From the foregoing it necessarily follows that actions of individuals in exercising the guarantees of the Bill of Rights may be controlled by the adoption of reasonable regulations establishing such controls. For example, in *Kovacs v. Cooper, supra,* this Court stated (quoting from *Saia v. New York, supra*): "The hours *and place* of public discussion can be controlled." Thus, the only question for consideration is whether or not the Resolution adopted by the Mayor and City Council of Havre de Grace, Harford County, Maryland, which refused the request of Appellants for permission to use the public park in that City for a religious meeting was a reasonable control concerning the "place of public discussion". Consideration of the testimony in this case leads to but one conclusion, viz., that the control adopted by the City of Havre de Grace was reasonable, and, therefore, constitutional and enforceable.

At the hearing before the Mayor and City Council of Havre de Grace, held on June 20, 1949, one of Jehovah's Witnesses (Mr. Laupert—129) made the statement "You know there are 256 denominations and about 700/800 faiths, each with their own form of worship." If, under the Constitution, a municipality is required to permit one religious sect to hold services in its public park, then such municipality can, of course, be required to afford the use of such park facilities to any and all religious sects or denominations. If we carry Appellants' theory of the protection afforded by the Constitution to the ridiculous extreme, public parks instead of being places of rest and recreation for the general public will become glorified camp meeting grounds. The general public—the taxpayers who pay the cost of, and upkeep on, public parks—will be wholly deprived of the facilities which they are entitled to use. Certainly a community, through duly elected officials, has the right to determine whether a park shall be used by colpor-

teurs for meetings or by the public in general for the purposes for which such park was acquired.

The foundation stone of our democratic form of government is the right of the majority to determine, within the limits of the Constitution, the laws under which we shall live. Most assuredly, the refusal of permission to use park facilities for religious services does not constitute either an abridgment of the freedom of speech or a prohibition against the free exercise of religion. Jehovah's Witnesses may practice and preach their faith in their own churches, through their publications and on the public streets. Under the decisions of this Court, they are assured the right, within reasonable hours, to go from door to door preaching their beliefs, distributing their literature, and even playing their phonographs. That they are not permitted to use a public park for their meetings admittedly is a limited control of where they may carry on their public discussions. However, it is a reasonable regulation of the conduct of such discussions. Refusal of permission to use the public park in the City of Havre de Grace did not abridge Appellants' rights to freedom of speech or peaceably to assemble, or to the free exercise of religion.

This Court so held in *Davis v. Massachusetts*, 167 U. S. 43, 47-48, 42 L. ed. 71, 72. In that case an ordinance prohibited the use of Boston Common for the purpose (among other things) of making a public address unless a permit was first obtained from the Mayor. An itinerant minister had preached a sermon having failed to obtain the required permit. The Supreme Judicial Court of Massachusetts, in an opinion by Mr. Justice Holmes, held that the ordinance was valid. Upon review, this Court affirmed that decision, saying (U. S. pp. 47-48, L. ed. p. 72):

"'* * * As representative of the public it may and does exercise control over the use which the public may make of such places, and it may and does delegate more or less of such control to the city or town immediately concerned. For the legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house. When no proprietary right interferes the legislature may end the right of the public to enter upon the public place by putting an end to the dedication to public uses. So it may take the lesser step of limiting the public use to certain purposes. See Dill, Mun. Corp., secs. 393, 407, 651, 656, 666; *Brooklyn Park Comrs. v. Armstrong*, 45 N. Y. 234, 243, 244 (6 Am. Rep. 70). If the legislature had power under the Constitution to pass a law in the form of the present ordinance, there is no doubt that it could authorize the City of Boston to pass the ordinance, and it is settled by the former decision (*Com. v. Davis*, 140 Mass. 485) that it has done so.'

"It is therefore conclusively determined there was no right in the plaintiff in error to use the Common except in such mode and subject to such regulations as the legislature in its wisdom may have deemed proper to prescribe. The 14th Amendment to the Constitution of the United States does not destroy the power of the states to enact police regulations as to the subjects within their control (*Barbier v. Connolly*, 113 U. S. 27, 31 (28:925); *Minneapolis & St. L. R. Co. v. Beckwith*, 129 U. S. 26, 29 (32:585, 586); *Giozza v. Tiernan*, 148 U. S. 657 (37:599); *Jones v. Brim*, 165 U. S. 180 (41:677), and does not have the effect of creating a particular and personal right in the citizen to use public property in defiance of the Constitution and laws of the state."

That decision has never been overruled by this Court. Although referred to in *Hague v. C. I. O.*, 307 U. S. 496,

515-516, 83 L. ed. 1423, 1436-1437, this Court merely stated that, "We have no occasion to determine whether, on the facts disclosed, the Davis case was rightly decided, but we cannot agree that it rules the instant case." Likewise, in the case of *Jamison v. Texas*, 318 U. S. 413, 415-416, 87 L. ed. 869, 872, reference was made to the Davis Case, but again, this Court merely said that it did not apply.

As stated above, this Court, as recently as *Kovacs v. Cooper, supra*, has ruled that the place of public discussion may be controlled. It is respectfully submitted that under the facts presented by these appeals, the control adopted by the Mayor and City Council of Havre de Grace was reasonable and that, therefore, there has been no abridgement of Appellants' constitutional rights.

Appellants, in arguing this point in their brief, contend that there are a number of decisions of this Court which are contrary to the views asserted by Appellee and which control these appeals. Examination of the cases cited by Appellants indicates that such is not the case. Those authorities can be divided into six different categories, as follows:

1. Cases where, under a local ordinance, a license was required before one was permitted to sell or solicit either on the public streets or from door to door. *Busey v. D. C.*, 138 F (2) 592; *Follett v. McCormick*, 321 U. S. 573, 88 L. ed. 938; *Murdock v. Penna.*, 319 U. S 105, 87 L. ed. 1292; *Jones v. Opelika*, 319 U. S. 103, 87 L. ed. 1290; *Largent v. Texas*, 318 U. S. 418, 87 L. ed. 873; *Cantwell v. Conn.*, 310 U. S. 296, 84 L. ed. 1213; *Lovell v. Griffin*, 303 U. S. 444, 82 L. ed. 949; *City of Blue Island v. Kozul*, 41 N. E. (2) (Ill.) 515.

As indicated above, each of these cases was concerned with ordinances which applied to the use of public streets. A clear and definite distinction should be drawn between

the rights of a municipality to control freedom of speech, press and religion on the public streets and to control the exercise of such rights in a public park. The latter is dedicated to a specific purpose, namely, rest and recreation for members of the general public. Historically, the streets and walks have been used for many things in addition to affording means of passage to pedestrian and vehicular traffic. For example, most municipalities have what are known as minor privileges. These are granted upon the payment of license fees. They cover such diverse purposes as areaways under, advertising signs suspended over, and peddlers' and shopkeepers' stands upon, public streets and sidewalks. Also the streets and walks are used daily by hawkers, peddlers, pamphleteers and for the delivery of merchandise. They are the highways of commerce. Public parks are not. A number of denominations and sects believe that total immersion is necessary to proper baptism. Certainly no one would contend that members of such denominations or sects could conduct their baptismal rites in a swimming pool in a public park. On the other hand, no one would object to such rites being conducted on the banks of a river or stream, highways of the State. Clearly there is a sharp and valid distinction between this line of cases and the one presented here for consideration.

2. Cases where a local ordinance prohibited the distribution of leaflets and circulars upon the public streets. *Hague v. C. I. O., supra; Jamison v. Texas*, 318 U. S. 413, 87 L. ed. 869; and *Schneider v. Irvington*, 308 U. S. 147, 84 L. ed. 155. These decisions are no more in point than those discussed under 1, above, for the reasons there stated.

3. Cases where a statute or ordinance made it a crime for one to remain on private property after a warning not to do so. *Marsh v. Alabama*, 326 U. S. 501, 90 L. ed. 265 in-

volved a company-owned town where warning notices against solicitation had been posted by the corporation. *Tucker v. Texas*, 326 U. S. 517, 90 L. ed. 274, was concerned with a town owned by the United States where verbal warnings had been given. These cases were decided on the same legal theory as those referred to under 2, above. This Court held that there was no substantial difference between the facts in the *Marsh* case and the case of the usual municipality where an ordinance had been adopted to prohibit solicitation. This Court decided the *Tucker* case on the basis of the *Marsh* decision, stating that a town owned by the United States was in an even weaker position than a company-owned town so far as a prohibition of solicitation is concerned. Each of these cases, as noted, was concerned with door to door solicitation and the distribution of pamphlets on the public streets. There was no concern with public parks.

4. *Martin v. Struthers*, 319 U. S. 141, 87 L. ed. 1313, where an ordinance made it a crime to summon an inmate of a private home in connection with the distribution of leaflets or circulars. In that case, this Court, although recognizing the rule that an individual may warn potential visitors to remain away from his property and, upon their failure so to do, may prosecute them for trespass, stated that such a warning could not be effected by a municipal ordinance. It is respectfully suggested that what an individual citizen in a town may do, the community, constituting all of the individuals in a town, should certainly be able to do. However, as in the cases referred to under 1, 2 and 3, this case was concerned with solicitation on the streets and from door to door, not the right to use public parks.

5. *Thornhill v. Alabama*, 310 U. S. 88, 84 L. ed. 1093, in which this Court invalidated a statute which made picketing illegal. However, reference is again made to the decision in *Carpenters & J. Union of America v. Ritter's Cafe, supra*, where this Court said:

> "The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that *concrete case* falls on the nearer or farther side." (Emphasis supplied).

6. Cases where a local ordinance either prohibited addresses in a public park or required a permit before a park could be used for such a purpose.

The case of *Davis v. Mass., supra*, which Appellants claim has been overruled, comes under this heading and has been discussed above. Another is *Hague v. C. I. O., supra*, to which reference has also been made. The remaining two cases in this category are *Sellers v. Johnson*, 163 F(2) 877; and *Commonwealth v. Gilfedder*, 73 N. E. (2) (Mass.) 241, 245. Each of these cases was decided after the decisions of this Court in *Jones v. Opelika; supra*, and *Murdock v. Penna., supra*. In each instance the Court considered the decisions in those cases so broad as to foreclose the issue there presented. It is interesting to note, however, that in *Commonwealth v. Gilfedder, supra*, the Supreme Judicial Court of Massachusetts made this comment:

> "* * * These cases (the Davis decisions) also turned upon the validity of ordinances forbidding public addresses upon Boston Common without a permit. We confess to difficulty in reconciling the present decision with the decisions in the Davis cases. Nevertheless, we feel compelled to the results now reached by the

broad sweep of principles set forth in great amplitude in more recent decisions of the Supreme Court of the United States."

Davis v. Mass., supra, has not been reversed and still sets forth the law applicable to the present appeals.

It is respectfully submitted that none of the cases just referred to, and upon which Appellants rely in this case, are in point; that the present *"concrete case"* does not fall within any of said decisions; that the present appeal presents a question different from those raised in any of the cases just discussed with the exception of *Davis v. Mass., supra.*

Should, however, this Court deem *Jones v. Opelika, supra, Murdock v. Penna., supra,* and subsequent decisions in point, then such decisions should be reversed. Such procedure would not be novel in this line of cases. It is to be remembered that the case of *Jones v. Opelika, supra,* was initially decided in accordance with Appellee's views (316 U. S. 584, 86 L. ed. 1691). Upon a change in the Court and re-argument, what had originally been the minority opinion, became the opinion of the Court and the basic authority for the decisions in *Murdock v. Penna., supra,* and the subsequent cases down to and including *Saia v. New York, supra.*

Even though there is a proper distinction between the exercise of the so-called fundamental rights on the streets and walks of a municipality and in public parks, the line should not be drawn in these cases. In both instances the conflict between the exercise of the guarantees of the First Amendment by the Jehovah's Witnesses and rights of the States under the Tenth Amendment should be resolved in favor of the latter. As was said by Mr. Justice Reed in the

original opinion in *Jones v. Opelika*, 316 U. S. 584, 593-594, 86 L. ed. 1691, 1699-1700:

> "* * * They are not absolutes to be exercised independently of other cherished privileges, protected by the same organic instrument. Conflicts in the exercise of rights arise and the conflicting forces seek adjustments in the courts, as do these parties, claiming on the one side the freedom of religion, speech and the press, guaranteed by the Fourteenth Amendment, and on the other the right to employ the sovereign power explicitly reserved to the State by the Tenth Amendment to ensure orderly living without which constitutional guarantees of civil liberties would be a mockery. Courts, no more than Constitutions, can intrude into the consciences of men or compel them to believe contrary to their faith or think contrary to their convictions, but courts are competent to adjudge the acts men do under color of a constitutional right, such as that of freedom of speech or of the press or the free exercise of religion and to determine whether the claimed right is limited by other recognized powers, equally precious to mankind. So the mind and spirit of man remain forever free, while his actions rest subject to necessary accommodation to the competing needs of his fellows."

In reversing the original decision in *Jones v. Opelika, supra*, and in the philosophy adopted by the majority of this Court in the subsequent decisions concerning Jehovah's Witnesses up to the case of *Kovacs v. Cooper, supra*, although this Court has in words adhered to the rule that "even the fundamental rights of the Bill of Rights are not absolute" in fact this Court has determined that such rights are paramount to all others—that in any conflict between the guarantees of the First Amendment and the rights of the States under the Tenth Amendment the former should control. *This should not be so.*

Finally in the case of *Panhandle Oil Co. v. Miss.*, 277 U. S. 218, 223, 225, 72 L. ed. 857, 859, 860, Mr. Justice Holmes made the following statements:

> "The question of interference with Government, I repeat, is one of reasonableness and degree and it seems to me that the interference in this case is too remote.
> * * *
>
> "The power to tax is not the power to destroy while this Courts sits."

It is respectfully submitted that, in the present appeals, the question of interference with Appellants' rights is likewise one of reasonableness and degree, and that, as in the case cited, such interference is too remote. It is further respectfully submitted that the right of the States and municipalities to control Appellants' actions in exercising their constitutional rights will never be used to abridge or to destroy such rights, so long as this Court sits; that the control, exercised in this case, is reasonable and does not involve a clear and present danger to the so-called fundamental rights guaranteed by the Constitution and upon which these Appellants so heavily rely.

II.

WAS THE USE BY APPELLANTS OF A PUBLIC PARK IN THE CITY OF HAVRE DE GRACE, HARFORD COUNTY, MARYLAND, FOR THE PURPOSE OF HOLDING PUBLIC MEETINGS AND DELIVERING SERMONS, PRECLUDED BECAUSE SUCH USE OF PUBLIC PROPERTY VIOLATES THE PRINCIPLE OF SEPARATION OF CHURCH AND STATE, SET FORTH IN THE FIRST AMENDMENT TO THE CONSTITUTION?

Appellants in their Brief devote a considerable portion of their argument to an attempt to explain away the recent decision of this Court in *McCollum v. Board of Education*, 333 U. S. 203, 92 L. ed. 649, apparently fearing that this Court will consider that case controlling here.

Appellee contends that the *McCollum* decision is in point and does control these appeals. In that case a statute of Illinois authorized Boards of Education to establish programs of religious education in the public schools. The Board of Education of one of the school districts of Champaign County established classes in religious instruction to be held in the public schools during hours when such schools were in session. Children whose parents requested that their children be permitted to attend were excused from regular classes once a week for thirty minute periods. Instruction was conducted by members of the Jewish, Roman Catholic and a few of the Protestant faiths.

The appellant filed a petition for mandamus, alleging that she was a resident and taxpayer of the county and the parent of a child then enrolled in the public schools. She further alleged that under the Illinois compulsory education law, parents were required to send their children, aged 7 to 16, to school. Appellant then charged that the religious education program was in violation of the First and Fourteenth Amendments of the Constitution of the United States. This Court sustained appellant's views and said: (U. S. 209-210, L. ed. 658)

> "* * * The operation of the st[redacted]pulsory education system thus assists and [redacted]ted with the program of religious instruction [redacted]d on by separate religious sects. Pupils compelled by law to go to school for secular education are released in part from their legal duty upon the condition that they attend the religious classes. This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith. And it falls squarely under the ban of the First Amendment (made applicable to the States by

the Fourteenth) as we interpreted it in Everson v. Board of Education, 330 U. S. 1, 91 L. ed. 711, 67 S. Ct. 504, 168 A. L. R. 1392. * * *"

Appellee respectfully submits that there is no possible differentiation between "utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith" and utilization of a tax-established and tax-supported public park system for such purpose; that the latter falls within the ban of the First Amendment just as much as the former; that, therefore, not only did the Mayor and City Council of Havre de Grace act legally in the adoption of the Resolution referred to above, but, because of the ban of the First Amendment, they could not, over objection by a taxpayer, grant permission to Appellants to use the public park in Havre de Grace.

In attempting to explain away the effect of the *McCollum* case, Appellants cite a number of decisions of State courts (*Nichols v. School Directors*, 93 Ill. 61; *Hurd v. Walters*, 48 Ind. 148; *Davis v. Boget*, 50 Iowa 11; *State ex rel Gilbert v. Dilley*, 145 N. W. (Neb.) 999; *Baggerly v. Lee*, 73 N. E. (Ind.) 921, 922; *Lagow v. Hill*, 87 N. E. (Ill.) 369; *Greenbanks v. Boutwell*, 43 Vt. 207) and the decision of this Court in *Everson v. Board of Education*, 330 U. S. 1, 91 L. ed. 711, which was concerned with reimbursement of the cost of use of school buses by children who attended parochial schools. Appellants also refer to five tax cases concerned with the applicability of exemption statutes.

The State decisions referred to above were all concerned with the use of school buildings for religious meetings. They all ante-date the decision in the *McCollum* case and are contrary to the views therein expressed. The tax cases throw no light on the problem presented by these appeals.

They merely indicate the desire of courts to construe liberally tax exemption statutes relating to charitable and religious institutions.

A public park being just as much a public institution as a public school, to permit the Jehovah's Witnesses to use the park in this case for religious services, would constitute either a preference of one religion over another, or part of a plan of impartial government assistance of all religions, either of which comes within the plan of the "establishment of religion" clause of the First Amendment of the Constitution of the United States. The *McCollum* case is in point and is a precedent to the present case. To so hold does not mean that religious services and demonstrations in public places are prohibited. They may still be held in places which are open and available to the public. They may not, however, be held in places which are owned by the general public.

CONCLUSION

It is respectfully submitted, therefore, that there has been no abridgement of the constitutional rights of Appellants and the judgments below should be affirmed.

Respectfully submitted,

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